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AUTOMOBILE FUEL ECONOMY STANDARDS

COMPLETED 493

ORIGINAL

HEARING

BEFORE THE

SUBCOMMITTEE ON
ENERGY CONSERVATION AND POWER

OF THE

COMMITTEE ON
ENERGY AND COMMERCE
HOUSE OF REPRESENTATIVES

MF 194

NINETY-NINTH CONGRESS

FIRST SESSION

ON

H.R. 1024, H.R. 1425, AND H. Res. 210

BILLS AND RESOLUTION TO AMEND CERTAIN ACTS AND TO IMPROVE CONSUMER INFORMATION AND FUEL EFFICIENCY WITH RESPECT TO CERTAIN MOTOR VEHICLES

SEPTEMBER 19, 1985

Serial No. 99-81

Printed for the use of the Committee on Energy and Commerce

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AUTOMOBILE FUEL ECONOMY STANDARDS

THURSDAY, SEPTEMBER 19, 1985

House of Representatives,
Committee on Energy and Commerce,
Subcommittee on Energy Conservation and Power,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:40 a.m., in room 2322, Rayburn House Office Building, Hon. Edward J. Markey (chairman) presiding.

Mr. **Markey**. This is a hearing of the Subcommittee on Energy Conservation and Power to examine the compliance of automobile manufacturers with current corporate average fuel economy standards, and H.R. 1024, H.R. 1425, and House Resolution 210.

Two news reports this week regarding automobile gas mileage underscore the two-headed nature of the fuel economy issue. On Monday, the Environmental Protection Agency released the 1986 gas mileage figures. These figures highlight the remarkable achievement of carmakers: an American car captured the No. 1 position; the Chevrolet Spring "ER" was rated with 55 miles per gallon in the city and 60 on the highway. The other cars in the top 10 all provided consumers with 40 to 50 miles on a single gallon of gas.

And then came the bad news. On Tuesday, Ford Motor Co. and General Motors announced that not only will they miss the 27.5 miles per gallon standard in 1986, but they will fall short in 1987 as well. The only ray of hope evident in these otherwise gloomy forecasts is that General Motors will exceed the standard in 1988 and will clearly outperform the standard by the end of the decade.

These contradictory reports—one celebrating automakers' performance on fuel efficiency, and the other lamenting their failure—provide two spotlights at either end of the long stage of fuel economy standards. In the middle of the stage, obscured by dark threats of economic blackmail—such as job layoffs, plant shutdowns, and moving car production overseas—stand the leading questions which this subcommittee will address this morning.

Why will GM and Ford fall short of the 27.5 miles per gallon standard our committee established 10 years ago? Can it be that the car companies don't have the necessary technology to meet the standard? Given the introduction of a GM car with a 60-mile-per-gallon rating and Chrysler's success, I think not.

Why does General Motors and Ford repeatedly state that they will shut down plants and throw people out of work instead of producing cars and paying the fines? Is it because the law dictates the closing of plants? The American Law Division of the Library of

Congress doesn't think so. A memorandum done for the subcommittee on this question concludes:

> Nothing in the act dictates that production be halted if the CAFE standards are not met. The legislative history of the original act and its 1980 amendment evince an understanding on the part of Congress and the implementing agency that its "carefully drafted" remedial scheme provides for civil penalties only and does not contemplate that production be halted upon noncompliance. Of course, the act does not forbid a manufacturer from deciding to halt or cutback production to avoid penalties. Its design, however, was intended to make clear that noncompliance was to occasion civil penalties only and that a halt in sales was neither dictated nor desired.

Obviously it would take drastic action to meet the 1986 standard if it is not rolled back. But what will it cost the car companies not in compliance to meet the 27.5 standard in 1987 and beyond? How much will this cost on a per car basis, especially compared to the low interest loan programs that have flooded the media recently?

What is the future of fuel economy standards? Should the fuel economy standards be abolished or rolled back because there is no longer a need to conserve energy? Are fuel economy standards less important than they were 10 years ago? Several facts provided by the Department of Energy refute any such notion.

Oil imports from OPEC sources rose for the first time in 8 years, and still account for over 37 percent of our oil imports. That figure is expected to rise significantly over the next 10 years.

In 1984, the transportation sector accounted for 62.3 percent of all U.S. petroleum consumption. That was slightly higher than the previous year's value of 61.9 percent and 8.5 percentage points higher than the 53.8 percent value in 1975.

America's domestic production of oil will drop by 20 percent in the next 10 years and net imports will rise nearly 60 percent.

The Department of the Interior and the Office of Technology Assessment released new estimates of our domestic offshore reserves. These revised estimates dropped oil and gas reserves by 45 to 55 percent.

I cite these facts not to cry that the sky is falling, but merely to show that the oil in the ground is shrinking. Not 1 gallon of oil has been added to the Earth since this committee last debated fuel consevation. In fact, billions have been wasted.

Today, the fuel economy program is at a crossroads. For years, the CAFE standard did not pinch the automakers' shoes because people wanted small cars. In recent years, as oil prices have stabilized, there has been a gradual shift back to bigger cars. This shift has put pressure on the carmakers to strike an appropriate balance between the imperative of energy conservation mandated by law and consumer taste. Chrysler struck that balance, and now boasts proudly that not only is it back from the brink and profitable as ever, but it has met the standard as well. Unfortunately, the GM-Ford petition asking for a rollback indicates that these companies, and nearly every foreign manufacturer, tipped the scale toward consumer taste, and now they turn to the Government to correct the balance by taking weight off half the scale.

The Department of Transportation commented 4 years ago on the importance of fuel economy standards. I will conclude with their statement which I believe crystallizes this debate:

> [t]he issue is not whether consumer demand will produce some level of increased fuel economy after 1985. The issue is, absent Federal standards to set a floor on new vehicle fuel performance, will the market demand be stable and strong enough, and will industry response be timely and adequate, to assure that this country minimizes its reliance on imported oil.
>
> If there is a misjudgment, if the consumer does not demand, and the auto industry does not offer, the best performance on fuel economy, the consequences are severe indeed . . . The underlying issue is this country's vulnerability in the face of the uncertain energy future, which may include future severe and unexpected disruptions in foreign oil supplies if wrong guesses are made about consumers' and manufacturers' future demands and response to automobile fuel efficiency.

That is why this subcommittee is holding this hearing, to make sure that wrong guesses are not made. So as we walk on the stage of the fuel economy issue, to discuss the future of the most successful conservation program ever passed by Congress, I think it is incumbent for us, during this time of energy complacency, to bow to the history of energy shocks and nod respectfully to the future, knowing that our actions will help determine its course.

That concludes my opening statement.

[Testimony resumes on p. 45.]

[The text of H.R. 1024, H.R. 1425, and H. Res. 210 follows:]

99TH CONGRESS
1ST SESSION

H. R. 1024

To amend the Energy Policy and Conservation Act to improve consumer information and fuel efficiency with respect to passenger automobiles, light trucks, and tires, to amend the Internal Revenue Code of 1954 to impose a tax on noncomplying manufacturers (in lieu of the penalty), and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 7, 1985

Mrs. BOXER (for herself, Mrs. SCHNEIDER, Mr. BROWN of California, and Mr. STUDDS) introduced the following bill; which was referred jointly to the Committees on Energy and Commerce and Ways and Means

---

A BILL

To amend the Energy Policy and Conservation Act to improve consumer information and fuel efficiency with respect to passenger automobiles, light trucks, and tires, to amend the Internal Revenue Code of 1954 to impose a tax on noncomplying manufacturers (in lieu of the penalty), and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Automobile Fuel Efficiency Amendments of 1985".

TITLE I—AMENDMENTS TO MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT

SEC. 101. FUEL ECONOMY TESTING.

(a) EPA ADMINISTRATOR REQUIRED TO CONSULT WITH SECRETARY OF ENERGY.—The first sentence of paragraph (1) of section 503(d) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2003(d)(1)), relating to measurement and calculation of fuel economy and average fuel economy, is amended by inserting before the period the following: "after consultation with the Secretary of Energy".

(b) PROCEDURES MAY BE IN CONJUNCTION WITH EMISSIONS TESTS UNDER CLEAN AIR ACT.—The third sentence of such paragraph is amended by striking out "shall" and inserting in lieu thereof "may".

(c) TESTING OF PRODUCTION VEHICLES AND TESTING OVER TIME.—Section 503(d) of such Act is further amended by adding at the end thereof the following new paragraph:

"(4)(A) For each model type and year, the EPA Administrator shall measure the fuel economy of a sampling of production passenger automobiles during the first month of manufacture for sale. The testing procedures for such measurement shall be the same as used under paragraph (1).

"(B)(i) If the fuel economy results under subparagraph (A) for any model type and year are different than the results under paragraph (1) for such type and year, the average fuel economy for purposes of section 502 (a) and (c) shall be adjusted accordingly.

"(ii) If the fuel economy results under subparagraph (A) for any model type and year are more than 0.5 mile per gallon higher or lower than the fuel economy results under paragraph (1) for such type and year, labels described in section 506 which are affixed more than 90 days after the date that results are available under subparagraph (A) shall reflect such results.

"(C) For purposes of this paragraph, the term 'production passenger automobile' means a passenger automobile manufactured for sale.

"(D)(i) Measurements and calculations under paragraph (1) shall be repeated over a period of years for purposes of monitoring automobile performance in use to determine the extent, if any, of decline in fuel economy.

"(ii) Such measurements and calculations shall be included in a report submitted by the Secretary biennially to the President and each House of Congress.".

(d) Periodic Review and Improvements in Procedures for Testing Fuel Economy.—Section 503 of such Act is further amended by adding at the end thereof the following new subsection:

"(g)(1) To the maximum extent practicable, procedures under subsection (d) shall simulate average drivers and driving conditions in the United States.

"(2) The EPA Administrator shall, from time to time, review the procedures under subsection (d).

"(3) If the EPA Administrator finds, in conjunction with the review under paragraph (2), that the requirements of paragraph (1) are not met, he shall revise procedures under subsection (d) to comply with such paragraph.

"(4) The EPA Administrator may not make substantial revisions under paragraph (3) more frequently than once every 3 years.".

(e) Effective Date.—The amendments made by this section shall apply to measurements of fuel economy for model years (as defined in title V of such Act) beginning more than 18 months after the date of the enactment of this Act.

SEC. 102. HIGHER FUEL ECONOMY STANDARDS FOR AUTOMOBILES.

(a) In General.—Paragraph (1) of section 502(a) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002(a)), relating to average fuel economy standards applicable to each manufacturer, is amended by striking out "1985" and all that follows and inserting in lieu thereof the following:

"1985 through 1987	27.5
1988 through 1990	32.5
1991 through 1994	38.0
1995 and thereafter	45.0.".

(b) EXCEPTIONS.—Paragraph (4) of subsection (a) of such section, relating to authority of the Secretary to amend average fuel economy standards, is amended to read as follows:

"(4)(A) The Secretary may, by rule, amend the average fuel economy standard specified in paragraph (1) for model year 1985, or for any subsequent model year, to a level which he determines is the maximum feasible average fuel economy level for such model year.

"(B) Except with respect to the first 4 model years to which section 101 of the Automobile Fuel Efficiency Amendments of 1985 applies, the Secretary may not take any action under subparagraph (A) which would have the result of imposing an average fuel economy standard which is more than 1.5 miles per gallon above or below the otherwise applicable standard under paragraph (1).".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 103. FUEL ECONOMY STANDARDS FOR LIGHT TRUCKS.

(a) IN GENERAL.—Subsection (b) of section 502 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C.

2002(b)), relating to fuel economy standards for automobiles which are not passenger automobiles, is amended—

(1) by striking out "(b) The" and inserting in lieu thereof "(b)(1) Except as provided in paragraph (2), the", and

(2) by adding at the end thereof the following new paragraph:

"(2)(A) The average fuel economy for automobiles which are not passenger automobiles and which are manufactured by any manufacturer in any model year after model year 1987 shall not be less than the number of miles per gallon established for such model year under the following table:

"Model Year:	Average fuel economy standard (In miles per gallon)
1988 through 1990	24.5
1991 through 1994	29.0
1995 and thereafter	35.0.

"(B) EXCEPTIONS.—

"(i) The Secretary may, by rule, amend the average fuel economy standard specified in subparagraph (A) for model year 1988, or for any subsequent model year to a level which he determines is the maximum feasible average fuel economy level for such model year.

"(ii) Except with respect to the first 4 model years to which section 101 of the Automobile Fuel Efficiency Amendments of 1985 applies, the Secretary may not take any action under clause (i) which would have the result of imposing an average fuel economy standard which is more than 1.5 miles per gallon above or below the otherwise applicable standard under subparagraph (A).".

(b) EXEMPTION FOR MANUFACTURERS OF LESS THAN 10,000 LIGHT TRUCKS.—Subsection (c) of section 502 of such Act, relating to exemptions from average fuel economy standards and alternative average fuel economy standards, is amended—

(1) by redesignating paragraph (2) as paragraph (3),

(2) by inserting after "paragraph (1)" in paragraph (3) (as redesignated) "or paragraph (2)", and

(3) by inserting after paragraph (1) the following new paragraph:

"(2) On application of a manufacturer who manufactured (whether or not in the United States) fewer than 10,000 automobiles other than passenger automobiles in the second model year preceding the model year for which the application is made, the Secretary may, by rule, exempt such manufacturer from subsection (b). An application for such an exemption shall be submitted to the Secretary, and shall contain such information as the Secretary may require by rule. Such exemption may only be granted if the Secretary determines that the average fuel economy standard otherwise applicable under subsection (b) is more stringent than the maximum feasible average fuel economy level which such manufacturer can attain. The Secretary may not issue exemptions with respect to a model year unless he establishes, by rule, alternative average fuel economy standards for automobiles other than passenger automobiles manufactured by manufacturers which receive exemptions under this subsection. Such standards may be established for an individual manufacturer, for all automobiles to which this paragraph applies, or for such classes of such automobiles as the Secretary may define by rule. Each such standard shall be set at a level which the Secretary determines is the maximum feasible average fuel economy level for the manufacturers to which the standard applies. An exemption under this subsection shall apply to a model year only if the manufacturer manufactures (whether or not in the United States) fewer than 10,000 automobiles other than passenger automobiles in such model year.".

(c) DETERMINATION OF AVERAGE FUEL ECONOMY.—Section 503 of such Act (as amended in section 2) is further amended by adding at the end thereof the following new subsection:

"(h) For purposes of section 502 (b) and (c), average fuel economy for automobiles other than passenger automobiles shall be calculated under rules similar to the rules prescribed under this section for passenger automobiles.".

(d) USE OF FUEL EFFICIENT LIGHT TRUCKS BY THE FEDERAL GOVERNMENT.—Title V of such Act is amended by inserting after section 510 the following new section:

"USE OF FUEL EFFICIENT AUTOMOBILES OTHER THAN PASSENGER AUTOMOBILES BY THE FEDERAL GOVERNMENT

"SEC. 510A. (a) The President shall, within 120 days after the date of the enactment of this section, promulgate rules which shall require that all automobiles other than passenger automobiles acquired by all executive agencies in each fiscal year which begins after such date of enactment achieve a light truck fleet average fuel economy for such year of not less than the average fuel economy standard applicable under section 502(b) for the model year which includes January 1 of such fiscal year.

"(b) As used in this section:

"(1) The term 'light truck fleet average fuel economy' means—

"(A) the total number of automobiles other than passenger automobiles acquired in a fiscal year to which this section applies by all executive agencies (excluding automobiles designed to perform combat related missions for the Armed

Forces or designed to be used in law enforcement work or emergency rescue work), divided by

"(B) a sum of terms, each term of which is a fraction created by dividing—

"(i) the number of automobiles other than passenger automobiles so acquired of a given model type, by

"(ii) the fuel economy of such model type.

"(2) The terms 'executive agency' and 'acquired' have the meanings given such terms in section 510.".

(e) EFFECTIVE DATES.—(1) The amendments made by subsections (a) and (c) shall take effect on the date of the enactment of this Act.

(2) The amendments made by subsection (b) shall apply to model years (as defined in title V of such Act) beginning after the 1987 model year.

(3) The amendment made by subsection (d) shall take effect on the date of the enactment of this Act.

SEC. 104. EXPLANATORY BOOKLET DISTRIBUTED BY EPA ADMINISTRATOR.

(a) IN GENERAL.—Paragraph (1) of subsection (b) of section 506 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2006(b)), relating to explanatory booklet distributed by EPA Administrator, is amended—

(1) by inserting after the first sentence the following new sentence: "The EPA Administrator shall update such booklet at least twice a year.", and

(2) by adding at the end thereof the following new sentence: "The Secretary of Energy shall distribute no less than 100 booklets each year to each dealer and shall distribute as many in addition to such 100 as are reasonably requested by dealers from time to time.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to the 12-month period beginning on the first day of the first month after the date of the enactment of this Act and corresponding 12-month periods thereafter.

SEC. 105. STATE FUEL EFFICIENCY INCENTIVE GRANTS.

Title V of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2001 et seq.) is amended by adding at the end thereof the following new section:

"STATE FUEL EFFICIENCY INCENTIVE GRANTS

"SEC. 513. (a) The Secretary shall award State fuel efficiency incentive grants to States which have in effect qualified revenue-raising measures designed to encourage automobile fuel efficiency.

"(b) The Secretary shall, by rule within 6 months after the date of the enactment of the first Act appropriating funds pursuant to this section, prescribe guidelines with respect to applications for such grants.

"(c) In awarding grants under subsection (a), the Secretary shall consider—

"(1) the contribution to energy conservation which can be reasonably expected as a result of the qualified revenue-raising measures of a State, and

"(2) the consistency of such measures with the purposes of this Act, and such other factors as the Secretary deems appropriate.

"(d) For purposes of this section—

"(1) the term 'qualified revenue-raising measure' means fees or taxes which—

"(A) are imposed with respect to the purchase, registration, or ownership of an automobile,

"(B) do not unfairly burden the poor, and

"(C) apply with respect to model years beginning after the date guidelines are prescribed pursuant to subsection (b), and

"(2) the term 'State' includes each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.".

SEC. 106. INJUNCTIONS FOR VIOLATION OF LABELING OR MILEAGE GUIDE REQUIREMENTS.

(a) IN GENERAL.—The Motor Vehicle Information and Cost Savings Act is amended by inserting after section 508 the following new section:

"INJUNCTIVE ENFORCEMENT OF LABELING AND MILEAGE GUIDE REQUIREMENTS

"SEC. 508A. (a) The United States district courts shall have jurisdiction—

"(1) to restrain any violation of section 506(a),

"(2) to restrain any person from distributing in commerce any automobile which does not comply with the applicable rule under section 506(a), and

"(3) to require the EPA Administrator or the Secretary of Energy to carry out his duties under section 506(b).

Any such action may be brought in any United States district court for a district wherein any act, omission, or transaction constituting the violation occurred, or in such court for the district wherein the defendant is found or transacts business. Except as provided in subsection (b), any such action may be brought by the Secretary or any other person. In any action under this section, process may be served on a defendant in any other district in which the defendant resides or may be found.

"(b)(1) No person other than the Secretary may bring an action under this section for a violation of section 506 if at the time such suit is to be brought the same alleged violation is the subject of a pending action based on the same issues by the Secretary under this section.

"(2) An action under subsection (a)(3) may not be brought by the Secretary.

"(c) The court may in the interest of justice award the costs of suit, including reasonable attorneys' fees and reasonable expert witnesses' fees to any person (other than the Secretary) who brings an action under this section.".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 107. SUGGESTIONS FOR ADDITIONAL LEGISLATION.

Section 512 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2012), relating to reports to the Congress, is amended by adding at the end thereof the following new subsection:

"(d) The Secretary shall, within 2 years after the date of the enactment of the Automobile Fuel Efficiency Amendments of 1985, submit to the Congress suggestions for additional legislation to carry out the purposes of this Act and the Automobile Fuel Efficiency Amendments of 1985.".

SEC. 108. OFFICE OF TECHNOLOGY ASSESSMENT STUDY.

(a) In General.—The Director of the Office of Technology Assessment, in consultation with automobile manufacturers, representatives of environmental and consumer groups, appropriate State and local officials, and representatives of labor, shall—

(1) determine whether manufacturers are likely to comply with the average fuel economy standards set forth in section 502 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002) without new incentives, and

(2) if the Director determines that new incentives are necessary to assure compliance with section 502 of such Act, suggest cost-effective incentives for manufacturers and consumers to assure compliance.

(b) The Director shall include the determinations and the suggestions, if any, under subsection (a) in a report which shall be submitted to the President and each House of the Congress no later than 18 months after the date of the enactment of this Act.

SEC. 109. FUEL ECONOMY OF AUTOMOBILE TIRES.

(a) In General.—The Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 et seq.) is amended by adding at the end thereof the following new title:

"TITLE VI—FUEL ECONOMY OF AUTOMOBILE TIRES

"DEFINITIONS

"SEC. 601. For purposes of this title—

"(1) the term 'tire' means any tire sold for use on an 'automobile' as defined in section 501(1);

"(2) the term 'to distribute in commerce' means to sell in commerce, to import, to introduce or delivery for introduction into commerce, or to hold for sale or distribution after introduction into commerce;

"(3) the term 'manufacture' shall have the meaning given such term in section 501(a);

"(4) the term 'manufacturer' means any person engaged in the business of manufacturing tires. The Secretary shall prescribe rules for determining, in cases where more than one person is a manufacturer of a tire, which person is to be treated as the manufacturer of such tire. Such term also includes any predecessor or successor of such a manufacturer to the extent provided under rules which the Secretary shall prescribe;

"(5) the term 'import' shall have the meaning given such term in section 501(10); and

"(6) the term 'Secretary' means the Secretary of Transportation.

"TEST PROCEDURES

"SEC. 602. (a) The Secretary shall, during the 30-day period beginning 30 days after the date of the enactment of this title, afford interested persons an opportunity to present written data, views, and arguments with respect to test procedures to be developed for tires under this section.

"(b) The Secretary shall develop categories of tires for which test procedures developed under subsection (c) will apply. To the extent practicable, these categories shall correspond to existing categories of tires, including categories based on size or use.

"(c) The Secretary, in consultation with the Environmental Protection Agency Administrator and the Society of Automotive Engineers, shall develop test procedures for determining the relative fuel economy attributable to the use of a specific tire compared to the use of another tire in the same category. Except as provided in subsection (e), such test procedures shall be prescribed not later than 13 months after the date of the enactment of this title.

"(d) The Secretary shall, within 7 months after the date of the enactment of this title, publish proposed test procedures with respect to categories of tires and shall afford interested persons an opportunity to present oral and written data, views, and arguments with respect to such proposed test procedures. Such comment period shall not be less than 45 days.

"(e) The Secretary may delay the prescription of test procedures under subsection (c) if he determines that he cannot, within the applicable time period, prescribe test procedures for a particular category of tire and, if he submits to the Congress a report of such determination, together with the reasons therefor, and also publishes such determination in the Federal Register, together with the reasons therefor.

"(f) Any test procedures prescribed under this section shall be reasonably designed to produce test results which reflect the effect on motor vehicle fuel economy of the use of a specific kind of tire during a representative average use cycle (as determined by the Secretary) and shall not be unduly burdensome to conduct.

"(g) If the Secretary determines that a test procedure should be amended he shall promptly publish in the Federal Register proposed test procedures incorporating appropriate amendments and afford interested persons an opportunity to present oral and written data, views, and arguments. This comment period shall not be less than 45 days.

"LABELING

"SEC. 603. (a) The Secretary, in consultation with the Federal Trade Commission, shall prescribe labeling rules under this section applicable to all tires for which test procedures are established, except to the extent that with respect to any category of tire the Secretary determines that labeling in accordance with this section is not technologically or economically feasible or is not likely to assist purchasers of tires in that category in making purchasing decisions.

"(b) A labeling rule prescribed under this section shall include—

"(1) a description of the category of tires to which such rule applies;

"(2) information requirements respecting the relative fuel economy attributable to the use of that tire as compared to other tires in that category, and as measured by the test procedure for that category; and

"(3) a prototype label and directions for displaying such label on such tires.

"(c) A rule under this section may require disclosure, in any printed matter displayed or distributed at the point of sale of such tire, of any information which may be required under this section to be disclosed on the label of such product.

"(d) A rule under this section (or an amendment thereto) shall not apply to any tire the manufacture of which was completed prior to the effective date of such rule or amendment, as the case may be.

"REQUIREMENTS OF MANUFACTURERS

"SEC. 604. (a) Each manufacturer of a tire to which a labeling rule under section 603 applies shall provide a label which meets, and is displayed in accordance with, the requirements of such rule.

"(b) If requested by the Secretary, the manufacturer of any tire to which a labeling rule under section 603 applies shall provide, within 30 days after the date of the request, the data from which the information included on the label and required by the rule was derived. Data shall be kept on file by the manufacturer for a period specified in the rule.

"(c)(1) When requested by the Secretary for purposes of ascertaining whether the information set out on a label for a tire, as required under section 603, is accurate, each manufacturer of such tire shall supply at his expense a reasonable quantity of such tires to any laboratory designated by the Secretary. Any reasonable charge levied by the laboratory for such testing shall be borne by the United States, if and to the extent provided in appropriation Acts.

"(2) A rule under section 603 may require the manufacturer or his agent to permit a representative designated by the Secretary to observe any testing required by this title and inspect the results of such testing.

"RULES

"SEC. 605. The Secretary may issue such rules as may be necessary to carry out the provisions of this title.

"PROHIBITED ACTS

"SEC. 606. It is unlawful—

"(1) for any manufacturer or private labeler to distribute in commerce any new tire to which a rule under section 603 applies, unless such tire is labeled in accordance with such rule;

"(2) for any manufacturer, distributor, retailer, or private labeler to remove or render illegible any label required to be provided with a tire under a rule under section 603;

"(3) for any manufacturer, distributor, or retailer, or private labeler to fail to permit access to, or copying of, records required to be supplied under this title, or fail to make reports or provide other information required to be supplied under this title; or

"(4) for any person to fail to comply with an applicable requirement of section 604.

"CIVIL PENALTY

"SEC. 607. (a) Any person who knowingly violates any provision of section 606 shall be subject to a civil penalty of not more than $100 for each violation.

"(b) As used in subsection (a), the term 'knowingly' means—

"(1) the having of actual knowledge, or

"(2) the presumed having of knowledge deemed to be possessed by a reasonable man who acts in the circumstances, including knowledge obtainable upon the exercise of due care.

"INJUNCTIVE ENFORCEMENT

"SEC. 608. (a) The United States district courts shall have jurisdiction to restrain—

"(1) any violation of section 606, and

"(2) any person from distributing in commerce any tire which does not comply with an applicable rule under section 606. Except as provided in subsection (b), any such action may be brought by the Secretary or any other person. Any such action may be brought in any United States district court for a district wherein any act, omission, or transaction constituting the violation occurred, or in such court for the district wherein the defendant is found or transacts business. In any action under this section, process may be served on a defendant in any other district in which the defendant resides or may be found.

"(b) No person other than the Secretary may bring an action under this section for a violation of section 606 if at the time such suit is to be brought the same alleged violation is the subject of a pending action based on the same issues by the Secretary under this section.

"(c) The court may in the interest of justice award the costs of suit, including reasonable attorneys' fees and reasonable expert witnesses' fees to any person (other than the Secretary) who brings an action under this section.

“ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

“SEC. 609. The provisions of title V of the Department of Energy Organization Act shall apply to this title except to the extent explicitly provided otherwise in this title.”.

(b) CONFORMING AMENDMENT.—Section 2 of such Act is amended by striking out “title V” and inserting in lieu thereof “titles V and VI”.

TITLE II—AMENDMENTS TO INTERNAL REVENUE CODE OF 1954 RELATING TO COMPLIANCE WITH AVERAGE FUEL ECONOMY STANDARDS BY AUTOMOBILE MANUFACTURERS

SEC. 201. TAX IMPOSED ON CERTAIN AUTOMOBILE MANUFACTURERS.

(a) IN GENERAL.—Part I of subchapter A of chapter 32 of the Internal Revenue Code of 1954 (relating to excise taxes on manufacturers of motor vehicles) is amended by adding at the end thereof the following new section:

“SEC. 4065. LOW AVERAGE FUEL ECONOMY TAX ON MANUFACTURERS.

“(a) TAX IMPOSED.—

“(1) IN GENERAL.—There is hereby imposed a tax with respect to being in the trade or business of manufacturing automobiles of the amount determined under subsection (b).

"(2) **TAX ONLY APPLIES TO MODEL YEARS 1988, 1991, AND 1995.**—The tax imposed by this subsection shall apply only with respect to model years 1988, 1991, and 1995.

"(b) AMOUNT OF TAX.—The amount of the tax imposed under subsection (a) shall be determined as follows:

"(1) PASSENGER AUTOMOBILES.—With respect to passenger automobiles, the tax shall be the amount which is equal to the product of—

"(A) the number of tenths of a mile per gallon by which—

"(i) the applicable average fuel economy standard for passenger automobiles for any model year, exceeds

"(ii) the average fuel economy of the passenger automobiles manufactured by the manufacturer during such model year,

"(B) the number of passenger automobiles manufactured by such manufacturer during such model year, and

"(C) $5.00.

"(2) AUTOMOBILES OTHER THAN PASSENGER AUTOMOBILES.—With respect to automobiles other than passenger automobiles, the tax shall be the amount which is equal to the product of—

"(A) the number of tenths of a mile per gallon by which—

"(i) the applicable average fuel economy standard for automobiles other than passenger automobiles for any model year, exceeds

"(ii) the average fuel economy of automobiles other than passenger automobiles manufactured by such manufacturer during such model year,

"(B) the number of automobiles other than passenger automobiles manufactured by the manufacturer during such model year, and

"(C) $5.00.

"(c) DEFINITIONS.—For purposes of this section—

"(1) CERTAIN SECTION 4064 DEFINITIONS TO APPLY.—The terms 'EPA Administrator', 'fuel', 'fuel economy', 'manufacturer', and 'model year' have the meanings given to such terms by section 4064(b).

"(2) CERTAIN DEFINITIONS CONTAINED IN THE MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT TO APPLY.—The terms 'automobile', 'passenger automobile', and 'manufacture' have the meaning given to such terms by section 501 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2001).

"(3) AVERAGE FUEL ECONOMY.—The term 'average fuel economy' means the fuel economy calculated by the EPA Administrator in accordance with section 503 of such Act with respect to any automobile manufacturer.

"(4) AVERAGE FUEL ECONOMY STANDARD.—The term 'average fuel economy standard' means the performance standard which specifies a minimum level of average fuel economy which is applicable to a manufacturer in any model year under section 502 of such Act.

"(d) SPECIAL RULE.—

"(1) DOMESTIC MANUFACTURING OPERATIONS AND IMPORT OPERATIONS TREATED SEPARATELY.—In the case of a manufacturer who, with respect to any model year, is treated by the EPA Administrator under section 503(b) of the Motor Vehicle Information and Cost Saving Act as a separate manufacturer, such manufacturer shall be treated by the Secretary as a separate manufacturer with respect to each of its manufacturing operations for purposes of this section and section 6431.

"(2) SMALL MANUFACTURER EXCEPTION.—For purposes of this section, rules similar to the rules contained in section 4064(d) (relating to special rules for small manufacturers) shall be prescribed by the Secretary by regulations."

(b) CONFORMING AMENDMENT.—The table of sections for such part I is amended by adding at the end thereof the following new item:

"Sec. 4065. Low average fuel economy tax on manufacturers."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to model years (within the meaning given to such term by section 4064(b)(4) of such Code) beginning after the 1987 model year.

SEC. 202. CREDIT ALLOWED AGAINST TAX IN CASE OF MANUFACTURER WHO EXCEEDS AVERAGE FUEL ECONOMY STANDARD.

(a) IN GENERAL.—Subchapter B of chapter 65 of such Code (relating to rules of special application with respect to abatements, credits, and refunds) is amended by adding at the end thereof the following new section:

"SEC. 6431. FUEL ECONOMY TAX CREDIT.

"(a) CREDIT ALLOWED.—In the case of any complying manufacturer, there shall be allowed as a credit against the tax imposed under section 4065(a), for any model year to which such section applies, the amount determined under subsection (b).

"(b) AMOUNT OF CREDIT.—

"(1) PASSENGER AUTOMOBILES.—The amount of any credit allowed under subsection (a) with respect to any passenger automobile manufacturer shall be the amount which is equal to the product of—

"(A) the number of tenths of a mile per gallon by which—

"(i) the average fuel economy of the passenger automobiles manufactured by the manufacturer during any model year, exceeds

"(ii) the average fuel economy standard for passenger automobiles for such model year,

"(B) the number of passenger automobiles manufactured by the manufacturer during such model year, and

"(C) $5.00.

"(2) AUTOMOBILES OTHER THAN PASSENGER AUTOMOBILES.—The amount of any credit allowed under subsection (a) with respect to any manufacturer of automobiles other than passenger automobiles shall be the amount which is equal to the product of—

"(A) the number of tenths of a mile per gallon by which—

"(i) the average fuel economy for automobiles other than passenger automobiles manufactured by the manufacturer during any model year, exceeds "(ii) the average fuel economy standard for automobiles other than passenger automobiles for such model year,

"(B) the number of automobiles other than passenger automobiles manufactured by the manufacturer during such model year, and

"(C) $5.00.

"(c) SPECIAL RULES.—

"(1) CREDIT AGAINST TAX IMPOSED IN A PRECEDING MODEL YEAR.—In the case of a manufacturer—

"(A) with respect to whom a credit is allowable under subsection (a) for any model year, and

"(B) who paid a tax imposed under section 4065 with respect to any model year preceding such model year,

the Secretary shall pay (without interest) to such manufacturer an amount equal to (i) the amount of the credit referred to in subparagraph (A) or (ii) the sum of the amounts of any payments of tax described in subparagraph (B) (reduced by the amount of any refund of such tax by the Secretary under this paragraph in any such preceding model year), whichever is less.

"(2) CREDIT TO REMAIN AVAILABLE AGAINST FUTURE TAXES.—To the extent that—

"(A) a manufacturer has paid no tax described in paragraph (1)(B) for any model year preceding the model year for which a credit is allowable under subsection (a), or

"(B) the amount of the credit allowable to such manufacturer for any model year exceeds the amount of any refund paid under paragraph (1) with respect to any model year preceding such model year,

such excess amount of credit shall remain available and may be applied against any tax imposed under section 4065(a) with respect to any model year succeeding the model year for which the credit is allowed.

"(3) SPECIAL RULE RELATING TO PERIOD OF LIMITATION FOR CREDIT OR REFUND.—For purposes of applying any period of limitation contained in section 6511 to any credit or refund allowable under subsection (a), any liability for and payment of any tax imposed under section 4065 which may be taken into account under paragraph (1) or (2) of this subsection shall be treated as having been incurred or made during such period.

"(d) DEFINITIONS.—For purposes of this section—

"(1) CERTAIN SECTION 4065 DEFINITIONS TO APPLY.—The terms 'automobile', 'average fuel economy', 'average fuel economy standard', 'EPA Administrator', 'fuel', 'fuel economy', 'manufacture', 'manufacturer', 'model year', and 'passenger automobile' have the meanings given to such terms by section 4065(b).

"(2) COMPLYING AUTOMOBILE MANUFACTURER.—The term 'complying automobile manufacturer' means any automobile manufacturer whose average fuel economy with respect to any model year is greater than the average fuel economy standard applicable to such manufacturer for such model year.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—

(1) Subsection (j) of section 6511 of such Code is amended by adding at the end thereof the following new paragraph:

> **"(8) For special rule with respect to refunds or credits of low economy fuel average tax on automobile manufacturers under section 6431, see section 6431(c)(3)."**

(2) The table of sections for such subchapter B is amended by adding at the end thereof the following new item:

> "Sec. 6431. Fuel economy tax credit.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to model years (within the meaning given to such term by section 4064(b)(4) of such Code) beginning after the 1987 model year.

SEC. 203. CONFORMING AMENDMENTS.

(a) REPEAL OF PENALTY.—

(1) UNLAWFUL CONDUCT.—Section 507 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2007), relating to unlawful conduct, is amended—

(A) by striking out "(a) Subject" through "(3)" and inserting in lieu thereof the following: "The following conduct is unlawful:", and

(B) by striking out subsection (b).

(2) CIVIL PENALTY.—Section 508 of such Act (15 U.S.C. 2008), relating to civil penalty, is amended to read as follows:

"SEC. 508. (a) If, on the record after opportunity for agency hearing, the Secretary determines that any person has violated section 507, the Secretary shall assess the penalties provided for under subsection (b). Any interested person may participate in any proceeding under this paragraph.

"(b)(1) Any person whom the Secretary determines under subsection (a) to have violated section 507 shall be liable to the United States for a civil penalty of not more than $10,000 for each violation. Each day of a continuing violation shall constitute a separate violation for purposes of this paragraph.

"(2) The amount of such civil penalty shall be assessed by the Secretary by written notice. The Secretary shall have the discretion to compromise, modify, or remit, with or without conditions, any civil penalty assessed under this subsection against any person. The Attorney General shall collect any civil penalty for which a manufacturer is liable under this subsection in a civil action under subsection (c)(2) (unless the manufacturer pays such penalty to the Secretary).

"(c)(1) Any interested person may obtain review of a determination of the Secretary pursuant to which a civil penalty has been assessed under subsection (b) in the United States Court of Appeals for the District of Columbia, or for any circuit wherein such person resides or has his principal place of business. Such review may be obtained by filing a notice of appeal in such court within 30 days after the date of such determination, and by simultaneously sending a copy of such notice by certified mail to the Secretary. The Secretary or the Commission, as the case may be, shall promptly file in such court a certified copy of the record upon which such determination was made. Any such determination shall be reviewed in accordance with chapter 7 of title 5, United States Code.

"(2) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court of appeals has entered final judgment in favor of the Secretary, the Attorney General shall recover the amount for which the manufacturer is liable in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.".

(3) CREDITS AGAINST PENALTY.—Section 502 of such Act (15 U.S.C. 2002), relating to average fuel economy standards, is amended by striking out subsection (l).

(b) INFORMATION REQUIREMENTS.—Title V of the Motor Vehicle Information and Cost Savings Act (as amended by this Act) is amended by adding at the end thereof the following new section:

"INFORMATION REQUIREMENTS

"SEC. 514. The Secretary and the EPA Administrator shall promptly report any determination by such Secretary or Administrator relating to the average fuel economy of any manufacturer with respect to model year 1988, 1991, or 1995 to the Secretary of the Treasury (or his delegate) for purposes of sections 4064 and 6431 of the Internal Revenue Code of 1954 (relating to low average fuel economy tax on manufacturers and fuel economy tax credit). The Secretary of the Treasury (or his delegate) may request any additional information in the possession of the Secretary or EPA Administrator which he may determine to be necessary and appropriate for purposes of administering such sections of such Code. The Secretary of the Treasury, the Secretary, and the EPA Administrator may prescribe, by regulations issued jointly by them, procedures governing the exchange of such information.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to model years (as defined in title V of such Act) beginning after the 1986 model year.

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99TH CONGRESS
1ST SESSION

H. R. 1425

To amend the Motor Vehicle Information and Cost Savings Act by eliminating the administrative discretion to reduce the 27.5 miles-per-gallon fuel economy standard applicable to passenger automobile manufacturers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 5, 1985

Mr. STARK introduced the following bill; which was referred to the Committee on Energy and Commerce

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A BILL

To amend the Motor Vehicle Information and Cost Savings Act by eliminating the administrative discretion to reduce the 27.5 miles-per-gallon fuel economy standard applicable to passenger automobile manufacturers, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Automobile Fuel Economy Standards Act of 1984".

CERTAIN ADMINISTRATIVE DISCRETION ELIMINATED

SEC. 2. Section 502(a) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002(a)) is amended to read as follows:

"SEC. 502. (a)(1) Except as otherwise provided in paragraph (3) or in subsection (c), the average fuel economy for passenger automobiles manufactured by any manufacturer in any model year after model year 1984 shall not be less than 27.5 miles per gallon.

"(2) Not later than January 15 of each year, the Secretary shall transmit to each House of Congress, and publish in the Federal Register, a review of average fuel economy standards under this part.

"(3) The Secretary may, by rule, amend the average fuel economy standard specified in paragraph (1) for model year 1986, or for any subsequent model year, to a level which he determines is the maximum feasible average fuel economy level for such model year, except that the Secretary may not amend any such standard if the amendment has the effect of decreasing such standard to a level below 27.5 miles per gallon for any model year.".

TECHNICAL AND CONFORMING AMENDMENTS

SEC. 3. (a) Section 502 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002) is amended—

(1) by striking out subsection (d);

(2) by redesignating subsections (e) through (l) as subsections (d) through (k), respectively;

(3) in subsection (e)(1), as redesignated, by striking out "(a)(3)," and inserting "(a)," in lieu thereof;

(4) in subsection (e)(2), as redesignated, by striking out "shall be—" and all that follows down through "at least 18 months" and inserting in lieu thereof "shall be promulgated at least 18 months";

(5) in subsection (g), as redesignated, by striking out "(a)(4) or (d)" and inserting in lieu thereof "(a)(3)";

(6) in subsection (h), as redesignated, by striking out "(d), or (f)" and by inserting in lieu thereof "or (e)"; and

(7) in subsection (k)(1), as redesignated, by inserting after "subsection (d)" the following: "(as in effect January 1, 1985)".

(b) Section 504(a) of such Act (15 U.S.C. 2004(a)) is amended—

(1) by striking out "(or in the case of an amendment" and all that follows down through "section 502(a)(5))"; and

(2) by striking out the last sentence thereof.

(c) Section 507(b) of such Act (15 U.S.C. 2007(b)) is amended by striking out "section 502(l)" and inserting in lieu thereof "section 502(k)".

(d) Section 508(b)(1)(A) of such Act (15 U.S.C. 2008(b)(1)(A)) is amended by striking out "section 502(l)" and inserting in lieu thereof "section 502(k)".

EFFECTIVE DATE

SEC. 4. The amendments made by this Act shall take effect on the date of the enactment of this Act.

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IV

99TH CONGRESS
1ST SESSION

H. RES. 210

To urge the Administrator of the National Highway Traffic Safety Administration to retain the current automobile fuel economy standards.

IN THE HOUSE OF REPRESENTATIVES

JUNE 26, 1985

Mr. **MARKEY** (for himself, Mrs. **SCHNEIDER**, Mr. **TAUKE**, Mrs. **BOXER**, Mr. **STARK**, Mrs. **JOHNSON**, Mr. **WAXMAN**, Mr. **WIRTH**, Mr. **LELAND**, Mr. **WALGREN**, Mr. **SIKORSKI**, Mr. **CHANDLER**, Mr. **LEACH** of Iowa, Mrs. **SCHROEDER**, Mr. **MARTINEZ**, Mr. **MRAZEK**, Mr. **BEILENSON**, Mr. **BEDELL**, Mr. **JEFFORDS**, Mr. **MORRISON** of Connecticut, Mr. **ACKERMAN**, Mr. **WEAVER**, Mr. **SCHUMER**, Mr. **FRANK**, Mr. **MINETA**, and Mr. **VENTO**) submitted the following resolution; which was referred to the Committee on Energy and Commerce

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RESOLUTION

To urge the Administrator of the National Highway Traffic Safety Administration to retain the current automobile fuel economy standards.

Whereas this Nation should pursue an energy policy that encourages energy efficiency and reduces our vulnerability to interruptions of foreign supplies;

Whereas in addition to price-induced conservation, corporate average fuel economy (CAFE) standards have been responsible for the near doubling since 1975 of the average fuel economy of new cars sold in the United States;

Whereas previous Government estimates of United States domestic oil and gas reserves, especially offshore supplies, recently have been revised significantly downward; and

Whereas General Motors, Ford Motor Company, and a number of Japanese and European automobile manufacturers have petitioned the Administrator of the National Highway Traffic Safety Administration to roll back the CAFE standards, and the Administrator will rule on them shortly: Now, therefore, be it

Resolved, That it is the sense of the House that the Administrator of the National Highway Traffic Safety Administration should retain the CAFE standards for passenger automobiles specified in current law.

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Mr. MARKEY. I will recognize the gentleman from California, the ranking minority member of this subcommittee, Carlos Moorhead.

Mr. MOORHEAD. Thank you, Mr. Chairman.

I want to thank the witnesses for their testimony before us today.

I believe we will have an important oversight responsibility regarding CAFE programs. We must keep in mind, however, that the Department of Transportation is in the middle of a rulemaking proceeding about whether CAFE standards should be reduced or its goal extended.

The CAFE program was created in the aftermath of the Arab oil embargo in the early 1970's. It was designed to achieve praiseworthy goals. As a Nation, we were not prepared to meet the challenge of rising petroleum prices. We had grown accustomed to cheap and plentiful gasoline. The average fuel economy of most cars was only 14 miles per gallon.

We have made great strides in improving automobile fuel efficiency since that time. Automobile manufacturers introduced new technologies, offered smaller cars, and downsized the weight of their cars. CAFE played an important role in this effort. The results are clear to everyone, even the largest passenger cars offered today have mileage ratings upwards of 20 miles per gallon.

Consumer demand for fuel-efficient cars, coupled with the industry's retooling, enabled domestic manufacturers to meet the CAFE standards during the 1970's and early 1980's.

However, conditions have changed, and perhaps we should take a second look at the way the program is working. Few seriously feel that consumer demand for fuel-efficient vehicles will outstrip manufacturers' ability to introduce fuel-saving cars. CAFE standards are no longer a milestone of intervention in the marketplace.

Gasoline prices have not continued to rise, but have actually declined. This has caused consumers' demand to shift back to larger cars, as they balance their desire for fuel efficiency with other factors, like comfort, performance, and durability.

As a result, domestic sales of small cars have dropped, and General Motors and Ford are having difficulty meeting the CAFE standards. Both companies may have to stop production of vehicles which American consumers want to order, in order to comply with the law.

This doesn't seem like the right result. A large portion of the small car market has been occupied by imports from Japan and other places. They are far above the CAFE standards in their overall production and importation into the United States, and if the domestic car manufacturers are forced out of the large car business or forced to reduce the number of large cars that they produce, those cars are going to be produced and sold by the Japanese and by other importers.

The domestic market will therefore suffer, and Americans will be put out of work.

I think we have to very carefully look at the whole program and see how it is working, see how we can keep encouraging reductions of fuel consumption and, at the same time, not put our companies and their manufacturers' ability out of business.

In the light of the large trade deficits, we must very carefully look at how the retention of the current standards without extension or without additional time will affect the competitiveness of the domestic automobile industry.

Again, I want to thank you for appearing today, and I look forward to hearing you.

Mr. MARKEY. The Chair recognizes the chairman of the full committee.

Mr. DINGELL. I commend the chairman of the subcommittee for holding the hearing today to inquire into the handling of title V of the Motor Vehicle Information and Cost Savings Act, which was added to that statute in 1975 by the Energy Policy and Conservation Act of that year, and on compliance with that law.

As one of the authors and the chairman of the subcommittee which worked on that particular matter, I have a particular interest in the way these matters are handled, both legislatively and administratively.

I note, however, the absence today of foreign automakers, such as Mercedes, Tokyo, and BMW, who may or may not favor these bills. I also note that EPA, which has a major role under the law, is not before us to discuss the change proposed.

The chairman assures me before the subcommittee considers a markup of any of the proposals before the committee that additional hearings will be scheduled. For that, I commend him.

I also understand from the chairman of the subcommittee that he will be careful today not to delve into ongoing rulemakings of the Department of Transportation, pursuant to permission to raise or lower corporate fuel economy standards in order to avoid possible Pillsbury-type problems, and also to assure fairness to all parties. And I do not believe that the proceedings before this committee should be used to influence the regulatory process one way or the other, even though I recognize fully the need and the desirability of the committee in maintaining its right to observe that the law is properly carried out and the committee maintaining its right to initiate the legislative process, to assure that needed changes, whichever way they might go, are undertaken by the Congress.

I understand that the transcript of this hearing and related materials will not be forwarded to the DOT for inclusion in the record of the proceedings. That is consistent with the historical practice of this committee concerning Pillsbury-type matters. I commend the Chair for those matters.

Since enactment of title V, the foreign and domestic motor vehicle manufacturers have made remarkable strides in cutting fuel consumption of automobiles and trucks per vehicle mile traveled. These are due principally to many factors: possibly the law and possibly to the marketplace. But the Nation and these firms cannot be complacent. Improvements in fuel efficiency must continue, even though today's consumer no longer appears to show great interest in fuel economy. But we must worry about future generations and we must also worry about the possibility of shutoffs of oil to the United States.

In 1975, the Congress established standards for model years 1978 through 1985, but the matter of fixing standards was allowed to remain in the hands of DOT for calendar years 1981 to 1984. In the late 1970's, when these were proposed, they were accompanied by dire predictions of fuel shortage, higher gas prices, and rosy predictions about technology developments, diesel use, and sales of small cars.

One thing which is noteworthy is that the consumers and the people have a way of confounding both the automakers and the Congress. And it can be observed that oil prices have fallen, that gasoline and oil supplies are increasing, that one can predict significant drops in gasoline prices over the next several years.

I recall questioning the then-Administrator of the National Highway Traffic Safety Administration, who is scheduled to be a witness today, about the reasonableness of the middle 1980 standards. I was concerned that even if the predictions proved accurate, that companies were being pushed too fast in those years toward the statutory goal of 27.5 miles per gallon for model year 1985.

I understood them that NHTSA would relook at these matters in the early 1980's and, if necessary, make readjustments. Those readjustments never occurred and the matter was never looked at, even though, as we now know, many of the predictions were totally off the mark, and indeed we are finding that American consumers find it much more desirable for many reasons to buy large cars. And, indeed, although the manufacturers can make cars which will meet almost any standard that is reasonable, they may not be able to sell cars in that particular mix to the American consumers.

A few years ago, General Motors, on the basis of information then available, anticipated that by this time they would be able to manufacture a fleet which would meet 31.5 miles per gallon. The mix of cars which they had proposed has been rejected by the consumers, who are now seeking a quite different mix, with the result that the fuel averages are quite different than had been anticipated.

Gasoline never approached the $2 per gallon or more, as predicted by NHTSA. We can observe that the possibilities of startling drops in gasoline prices, as much as 7 or 8 cents, are now in the immediate offing.

The diesel market crashed. Diesel automobiles have been rejected. Imports fell. Domestic oil production rose. OPEC's grip on the United States and the world has lessened significantly. Sales of small cars at GM, Ford, and Chrysler have never reached their predictions. And, indeed, those companies are having to subsidize significantly the production of the small end of the market, in order to maintain the position that they have right now with regard to the CAFE standards.

On top of that, inflation climbed, and we had a recession, and we can note that despite these, because of massive investments, GM, Ford, and Chrysler improved their fuel economy. Somehow, because of consumer preference and model mix, it's not enough.

Fortunately in 1975 Congress had the foresight to recognize that the picture in outyears may not be the same as 1975 predictions. For that reason, the Secretary was authorized in section 502(A)(4), subject to congressional veto, to raise or lower the 27.5-mile-per-gallon standard to a level which the Secretary determines is the maximum feasible average fuel economy level.

Included in that is the question of economic practicability. The *Chada* decision has affected this by eliminating the congressional veto, and so we again find ourself with a somewhat different set of circumstances than we had anticipated at the time that we wrote the legislation.

It can be observed that petitions now lie for raising and lowering the standard for model years. I would not urge that this committee do anything which in my view is improper, but I would observe to this committee that at stake are jobs in the auto industry and the auto industry-producing areas of this country. But also at stake are jobs in the area of textiles, computers, high-technology computer chips, steel, nonferrous metals, glass, rubber, and plastics, and a large number of other constituents of American automobiles.

I will observe that we are in a massive trade war with the Japanese having a $2,000 a vehicle advantage over the United States, because of currency values and their unique tax structure.

I would also observe that it is impossible for any of us to look at others and say, "Pardon me, but your end of this particular lifeboat is sinking."

The auto industry is the largest consumer of all commodities of the types that I have indicated in my earlier comments, and I would urge that actions not be taken here or elsewhere which would adversely affect the economic viability of that particular industry.

I would note that some urge lowering of standards for a few years, and that GM, Ford, Mercedes, BMW, and others pay civil penalties.

Now let's inquire into what that means. It is said that these do not constitute criminal behavior and that these funds would enrich the Treasury, would provide more money for defense, and would provide other benefits to the society.

In the alternative, the firms may very well have a choice to halt or curtail production of some of these cars to move production, to move production parts of the automobile parts overseas, so as to alter the CAFE mix which indeed is within their right to do.

I would observe in an interesting comment before this Senate committee, one corporation of which I happen to regard myself as a rather good friend, Mr. Chris Kennedy of Chrysler said, "We have two choices," referring to the CAFE situation, with regard to four-wheel-drive trucks.

> We have two choices as the regulation now stands: We can stop building some or all four-wheel-drive trucks, or else we can keep on building them, violate the law and be subject to millions of dollars in fines, and NHTSA has suggested that the fines for four-wheel-drive vehicles would only be about $2 million, and probably would be waived by the Federal Trade Commission. We do not think the fine would be waived. Even if it were, the adverse publicity would be very damaging, and we do not want to be forced to violate the law. We do not know why the administration set standards at levels which jeopardize the jobs of thousands of workers and leads to substantial fines. We as a corporation do not like working in an atmosphere in which we have to make a deliberate decision to violate the law.

That was said in 1980. It was a statement with which I concurred.

I would be outraged, if I learned from our investigation in the Oversight Subcommittee that E.F. Hutton or General Dynamics or any firm had made a deliberate decision to violate the law.

So, I think, were many stockholders of GM, Ford, Chrysler, or BMW.

In 1980, this committee paid heed to this industry concern and modified the DOT carryforward carryback proposal to prevent a finding of unlawful conduct prior to utilization of these provisions of law.

The committee said as follows at that time in the report:

> The committee does not intend that the Secretary, in establishing fuel economy standards, take into account the ability of one or more manufacturers to pay civil penalties and to somehow shirk the stigma associated with the payment of these fines.

Deliberate disobedience of the law is abhorrent, even if it might be a sound business judgment. I commend the corporations for reaching that conclusion. It is the only correct one that they can arrive at.

Thank you, Mr. Chairman.

[Testimony resumes on p. 199.]

[The prepared statement of Mr. Dingell, and documents relating to the hearing subject, follow:]

OPENING STATEMENT OF
THE HONORABLE JOHN D. DINGELL
CHAIRMAN, COMMITTEE ON ENERGY AND COMMERCE
AT HEARING OF
SUBCOMMITTEE ON ENERGY CONSERVATION AND POWER
ON H.R. 1024, H.R. 1425 AND H.RES. 210

September 19, 1985

Mr. Chairman, I commend you for holding a hearing today on bills to amend Title V of the Motor Vehicle Information and Cost Savings Act which was added to that Act in 1975 by the Energy Policy and Conservation Act of 1975 and on compliance with that Title. That law, which establishes motor vehicle fuel economy requirements for foreign and domestic vehicles sold in the U.S., was developed by the former Energy and Power Subcommittee while I was Chairman of that Subcommittee. While that law imposes considerable regulatory burdens on the foreign and domestic motor vehicle industry, I believe it has generally worked well, together with other significant factors, such as competition, in achieving the goal of automobile fuel efficiency.

I note the absence today of foreign auto makers, such as Mercedes, Toyota, and BMW, who may not favor these bills. Also, the Environmental Protection Agency, which has a major role under the law, is not here to discuss the changes proposed by the bills that would affect that agency. The Chairman assures me that before the Subcommittee considers markup of any of these proposals, additional hearings will be scheduled.

I also understand from the Chairman that the Subcommittee will be careful today not to delve into the ongoing rulemakings at the Department of Transportation (DOT) pursuant to petitions to raise and lower the corporate average fuel economy standard in order to avoid any possible Pillsbury-type problems. I understand that the transcript of this hearing and related materials will not be forwarded to DOT for inclusion in the record of those proceedings. That is consistent with the historical practice of this Committee concerning Pillsbury-type matters, although I recognize that the DOT proceeding is not an adjudication. I commend Chairman Markey.

Since enactment of Title V, the foreign and domestic motor vehicle makers have made considerable strides in cutting fuel consumption of cars and trucks per vehicle mile traveled. Whether these are due principally to this law or other factors, or both, suffice it to say the law contributed to this remarkable achievement. But the Nation and these firms cannot be complacent. Improvements in fuel efficiency must continue, even though today's consumer no longer appears to show great interest in fuel economy. We must also worry about future generations.

In 1975, Congress established the standards for model years 1978, 1979, 1980 and 1985, but left it up to DOT to set standards for model years 1981 to 1984. In the late 1970's, when those were proposed by DOT, they were accompanied by dire predictions of further fuel shortages and higher gasoline prices and rosy predictions on technology achievements, diesel use, and sales of small cars for the 1980's. At hearings before the former Energy and Power Subcommittee, I recall questioning the then Administrator of the National

Highway Traffic Safety Administration, who is to be a witness today, about the reasonableness of the middle 1980's standards. I was concerned that even if the predictions all proved accurate, the companies were being pushed too fast in those years toward the statutory goal of 27.5 miles per gallon for model year 1985. I understand then, that NHTSA would relook at these matters in the early 1980's and, if necessary, make adjustments. That never occurred, even though, as we all now know, many of those predictions fell far short of their mark.

Gasoline never even approached $2 per gallon or more as predicted by the then NHTSA Administration ; the diesel market crashed; oil imports fell; domestic oil production rose; OPEC's grip on the U.S. loosened significantly; and sales of small cars by Ford, GM, and Chrysler never reached even their predictions. On top of that, inflation climbed and we had a recession. Despite this, many firms, including Ford, GM, and Chrysler, improved their fuel economy. But for some, not enough.

Fortunately, in 1975, Congress had the foresight to realize that the picture in the out years may not be the same as 1975 predictions. Section 502(a)(4) authorizes the Secretary, subject to congressional veto, to lower or raise the 27.5 miles per gallon standard to a level which the Secretary determines is the maximum feasible average fuel economy level. With the Chada decision, the congressional veto is not a factor for either approach, nor was it if the lowering was not less than to 26 miles per gallon.

Some petitioned DOT to lower the standard for model years 1986, 1987 and 1988. Others petitioned to raise it for model year 1987 and later years. All the petitions are pending at DOT. As far as I can tell, that Department is providing a fair and timely administrative process. While I and others may not agree with one or more of the petitions, I do not think it fair or appropriate for Congress to change that process, as proposed in H.R. 1024, the first time it is triggered. This is particularly true when the effect of the change is to preclude a lowering of the standard, even if justified, and to lock in a process to raise the level each model year.

Similarly, I oppose H. Res. 210 because it also seeks to interfere in the administrative process authorized by law by telling DOT that the House believes that the standards should not be lowered, regardless of the merits for such lowering.

H.R. 1024 seeks to amend the law to change the means by which EPA measures fuel economy. It too would preclude a lowering of the standard by fixing the standard at 27.5 miles per gallon for model years 1985 through 1987. It also establishes new and substantially higher fuel economy levels for cars (45 miles per gallon) and light trucks (35 miles per gallon) through model year 1995 and thereafter.

I will be interested in learning what evidence exists to support such changes in the law and the impact of such changes. I am particularly concerned in light of recent revelations this week and earlier this year that the United States has become a debtor Nation in trade and that our trade imbalance with Japan is growing in leaps and bounds.

Can this Nation afford to pass tougher laws in the name of energy conservation to require domestic firms to meet such standards when they are struggling to maintain market share against imports? I think not, if we want a healthy domestic auto and truck industry and the high tech, steel, glass, textile, rubber, and other suppliers dependent on that industry as part of our economy for the next decade or the next century.

What, for example, will the action by Saudi Arabia this week in increasing oil production do to this industry's ability under present law, let alone H.R. 1024, to comply with the law? I fear the worst, which for Michigan, is job loss.

Finally, I note some urge that instead of DOT lowering the standard for a few years, that Ford, GM, Mercedes, BMW, etc., pay civil penalties. But what does that mean? Do those who urge this, also understand that paying such fines will not get compliance unless, at the same time, these firms also halt or curtail some production which would cause job loss for our people? Do they understand that DOT has not yet decided what firms, if any, must pay penalties for model year 1984 after considering any credits and will not decide on Model Year 1985 until next year? Such fines will enrich the treasury, possibly provide more money for defense, and reduce revenues for auto companies for research and other purposes, but it will not improve fuel economy. Do they want these firms to deliberately plan to disobey the law?

Last May, at a Senate hearing on this issue, Ford stressed that paying civil penalties "is not an alternative" for Ford, because failure to meet the standards is "unlawful conduct." The company may plan to meet the law and later pay a fine, but it cannot plan to disobey the law "even if it means curtailing production" or "closing down plant." That is not a new view. It was said in 1970's and at April 15, 1980 hearings before the former Energy and Power Subcommittee in connection with the carryforward/carryback amendments by Mr. Christopher M. Kennedy of Chrysler who said:

> "We have two choices as the regulation now stands: We can stop building some or all four-wheel-drive trucks, or else we can keep on building them, violate the law and be subject to millions of dollars in fines.
>
> "NHTSA has suggested that the fines for four-wheel-drive vehicles would be only about $2 million, and probably would be waived by the Federal Trade Commission. We do not think the fine would be waived. Even if it were, the adverse publicity would be very damaging and we do not want to be forced to violate the law."
>
> * * *
>
> "We do not know why the administration set standards at levels which jeopardize jobs of thousands of workers and lead to substantial fines. We, as a corporation, do not like working in an atmosphere in which we have to make a deliberate decision to violate the law."

I for one would be outraged if I learned from Oversight Subcommittee investigations that E.F. Hutton or General Dynamics or any firm made a "deliberate decision to violate the law." So would many stockholders of

Ford, Chrysler, BMW, or GM.

In 1980, this Committee paid heed to this industry concern and modified the DOT carryback/carryforward proposal to prevent a finding of unlawful conduct prior to utilization of these provisions of law. This Committee said (H.Rept. 96-1026, May 16, 1980):

> "The Committee does not intend that the Secretary, in establishing the fuel economy standards, take into account the ability of one or more manufacturers to pay civil penalties and to somehow shirk the stigma associated with the payment of thoe fines."

Deliberate disobedience of the law is abhorrent, even if it is a sound business judgment. I commend Ford, Chrysler, and GM for reaching that conclusion as well. It is right.

Thank you.

THE SECRETARY OF COMMERCE
Washington, D.C. 20230

MAR 12 1985

RECEIVED

MAR 15 1985

Subcommittee on
Oversight and Investigations

Honorable John D. Dingell
Subcommittee on Oversight and
Investigations
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

Dear John,

Thank you for your letter regarding the Japanese automobile export restraint.

I have enclosed information which addresses the additional questions you raise. We have asked the Department of Transportation to respond directly to your Subcommittee on sections (b)ii and (b)iii of question 5. These sections deal with possible administrative and legislative options for modifying existing Corporate Average Fuel Economy (CAFE) standards.

I hope that the additional information we are providing will be helpful to you and other members of the Subcommittee.

Sincerely,

Secretary of Commerce

Enclosure

Question 1: In reply to my question numbered 2, the Department provided a list of trade initatives announced by Japan and included an attachment entitled Japanese "Comprehensive Economic Measures." However, the reply appears to show some vagueness as to the status of each measure. For example, in discussing the third initiative, the Department states that "passage of some sixteen laws" in 1983, "as they are implemented at the administrative level, could represent the most significant and wide-ranging removal of foreign barriers to the Japanese market" since 1979. But I do not feel assured by these comments that implementation is complete or even well underway. Please provide a more detailed status of each of these initiatives, including the "NTT Agreement" and the "yen-dollar accord."

Answer:

In answer to your request for a more detailed status report on the implementation of various Japanese trade measures, we have attached a comprehensive report compiled last fall on this subject by an interagency task force. Commerce participated in this group.

Since this report was completed, little has changed regarding implementation. The Government of Japan has given us assurances that the procurement provisions contained in the U.S.-Japan NTT Agreement will continue in effect despite NTT's "privatization" on April 1, 1985. The tariff measures contained in the April 27, 1984 set of trade measures will be implemented on April 1 as scheduled. Further talks have been held between Treasury and the Japanese Ministry of Finance on implementation of the yen-dollar accord.

Considerable progress has been made to date in implementing the agreed measures contained in the Yen/Dollar Report released by the U.S. Treasury Department and the Japanese Ministry of Finance in May 1984. Since the agreed measures are to be phased-in over time, it is too early to draw any definitive conclusions about the success of the agreement; however, so far, Japan has taken all the agreed steps on or before the dates specified in the Report. Nevertheless, much more needs to be done to fulfill the entire letter and spirit of all the agreed measures. Treasury continues to monitor Japan's implementation carefully through Embassy reporting from Tokyo, consultations with the private sector about market developments, and periodic follow-up meetings with the Ministry of Finance. The next follow-up meeting will take place in Spring 1985.

In addition, recent revisions in Japanese standards laws have been implemented by MITI with respect to the Electrical Appliances Law and the Consumer Products Safety Law. Two U.S. laboratories have been approved as designated testing laboratories for type approval of electrical equipment. Implementation by other Ministries has been limited and in no other instances have U.S. laboratories been designated. When these laws are fully implemented, their effect will be far-reaching, but progress to date has been disappointing.

The Administration is continuing to encourage those ministries which have not yet implemented recent changes in Japanese standards laws to do so, and has begun disseminating information about this process to the U.S. business community. This latter effort includes a series of seminars sponsored by the U.S. Foreign Commercial Service, which is scheduled to begin in April 1985.

The Administration's current bilateral trade efforts focus on intense sectoral negotiations to improve U.S. access to Japanese markets. This process was launched by President Reagan and Prime Minister Nakasone at their January 1985 summit. Its initial focus is on telecommunications, electronics, medical/pharmaceutical and forest products. Our objective is the elimination of all Japanese barriers in these sectors, in which U.S. firms currently hold internationally competitive positions.

Question 2: The reply also states that Commerce and the Council of Economic Advisors "each prepared studies on the restraint issue with input from other government agencies." Please provide a copy of the CEA studies and copies of the "input" from other agencies. Please also identify the independent consultant mentioned in answer to question 7.

Answer:

We also have attached a copy of the Council of Economic Advisors' analysis of the Japanese automobile export restraint. As mentioned in our February 14 reply to the Subcommittee, the Commerce Department's study of the restraint included input from other agencies.

This input consisted of oral comments on various drafts of the study and, in some cases, statistical data which was presented in the Department's report. The Department developed many of the projections of industry financial performance using company-specific forecasting models designed during 1984 with assistance from Jack Faucett Associates, Inc. of Chevy Chase, Maryland, a private consultant. Key elements of these models were described in our previous response to the Subcommittee.

Question 3: What is the Administration doing to open Japan's market to U.S. car exports such as opening Japan's "vehicle distribution system" and allowing "self-certification testing to show compliance" with Japan's emission and safety standards?

Answer:

The Administration worked closely with the Motor Vehicle Manufacturers Association and its member companies during 1981-83 to obtain Japanese Government approval of a self-certification approach toward demonstrating compliance with Japanese safety and noise standards. The Japanese Government responded to the U.S. industry's proposal in March 1983 by announcing several changes in its "type designation" vehicle certification procedures. According to the Japanese Government, these changes were designed to facilitate use of the type designation system by foreign manufacturers.

On December 21, 1984, The Japanese Ministry of Transport approved the first type designation application for an American car under the revised system. U.S. vehicle manufacturers are currently evaluating the new type designation system to determine if it is more cost effective than the "type notification" procedures they generally have used in the past. Future Administration efforts to obtain Japanese Government acceptance of a self-certification system will depend on the results of the U.S. industry's present evaluation of the revised type designation system.

Major Japanese automobile manufacturers reportedly do not allow their dealers to sell unaffiliated vehicle makes, but General Motors, Ford, Chrysler and American Motors all have an established distribution systems in Japan. These companies have not asked for U.S. Government assistance in creating alternative distribution systems there. The inability to use the distribution system of Japanese manufacturers may have been a substantial impediment to U.S. manufacturers in the past (and contrasts sharply with the extent to which Japanese manufacturers were able to utilize the existing distribution system of U.S. manufacturers to reach U.S. consumers). However, now that U.S. manufacturers have invested substantial time and resources in developing an independent distribution system in Japan, this lack of access is no longer significant. U.S. auto manufacturers are continuing new marketing approaches in Japan to increase sales volume and contain their distribution costs.

Question 4: In reply to question 10, the Department states that without the VRA, about 110,000 auto jobs would be lost by 1987, but the Department believes that a "significant" portion of the loss "could occur through employee attrition" which usually means retirement due to age or health. I question this, because the loss will be due to a reduction of 1.1 million units of small cars. To achieve that reduction, whole lines and plants where small cars are produced would probably have to be closed. I doubt that attrition could be a real factor in such closures. Do you agree? Please explain. Also, what is the effect of a loss of 110,000 jobs on the local economy?

Answer:

U.S. Big Four vehicle manufacturers currently assemble small cars (subcompact and small specialty) in ten plants in the United States and in one plant in Canada. These U.S. facilities are located in seven states (Georgia, Illinois, Michigan (2), Missouri (2), New Jersey, Ohio, and Wisconsin (2)), indicating a fairly wide geographical dispersion of small car production. Component production for these assembly plants also is believed to be spread among several states.

If U.S. small car production fell by one million units due to removal of the restraint, it is likely that certain small car assembly plants would close as production was consolidated. Component plants, particularly in the Midwest, also could be affected seriously. In cases where entire assembly plants closed, major layoffs would occur and worker attrition probably would not be an important factor in softening the economic effects on workers and communities. In other instances, particularly in component and material supplying industries, worker attrition could be a significant element in the adjustment process.

Given the large size of the auto industry, worker turnover should be sufficient to offset anticipated job losses due to productivity advances, and perhaps to offset some layoffs resulting from potential declines in small car production volume during the 1985-87 period. The greatest short-term employment losses and burden on local economies would be felt in those states which are most dependent on small car production and related activities: Michigan, Missouri, Ohio, and Wisconsin. Other small car manufacturing states would be less affected and the adjustment process would be somewhat easier.

Question 5(a): The analysis states that Commerce did not "specifically assess the effect of unrestrained Japanese car imports on the U.S. companies' ability to meet the Corporate Average Fuel Economy (CAFE) standards." Please explain why Commerce did not make such an assessment. If the VRA is not extended and as the analysis estimates, 1.1 million units of small cars are not produced domestically, can the domestics meet the CAFE or use "carryback" credits without severe cutbacks in production of intermediate and large cars with attendant loss of jobs? Is that factor a serious concern to your Department and the Department of Transportation?

Answer:

The Department of Transportation, National Highway Traffic Safety Administration (NHTSA), has principal responsibility for administering the Corporate Average Fuel Economy (CAFE) standards. Because of NHTSA's role in this program, it alone has access to the data necessary to perform the type of future-oriented analysis suggested in your February 19 letter. For similar reasons, NHTSA will respond directly to the Subcommittee on possible administrative and legislative changes to the CAFE program (Questions 5(b)ii and 5(b)iii).

During the preparation of its analysis, the Department recognized that elimination of the Japanese export restraint could complicate the efforts of U.S. auto manufacturers to meet future CAFE requirements. Due to the post-1981 shift in consumer demand back toward larger vehicles, full-line U.S. producers were forced to carry forward credits earned during the early 1980s to comply with the model year (MY) 1983 CAFE standard. A similar situation is likely to occur with respect to the MY 1984 standard. Thus, separate from the issue of the Japanese restraint, the Administration has become increasingly aware of and concerned about the possible need for changes in the CAFE program.

Question 5(b) The analysis also states that:

"While Administrative mechanisms are available to reduce the existing 27.5 mpg standard, the best way to resolve the problems appears to be legislative. While this approach is full of difficulties (i.e., in many circles, CAFE is seen as the only element of the Administration's energy policy), it is one we may have to pursue if the restraint is lifted."

(i) Was the Department of Transportation (DOT) and the National Highway Traffic Safety Administration (NHTSA) consulted regarding this statement? What was their input?

Answer:

The Department did not consult NHTSA or other agencies within the Department of Transportation regarding its staff's views on the feasibility of modifying the CAFE program through administrative or legislative action. The CAFE language cited on page two of your February 19 letter was intended only to alert senior Administration officials to the range of options available to modify existing CAFE standards. At this stage, the Administration has not made any decisions regarding the future of the CAFE program.

Questions 5(b)ii and 5(b)iii - See response to 5(a).

Question 5(b)iv: If both administrative and legislative measures are not "available," or if they are not "available" in a timely fashion, should the VRA be ended?

Answer:

The Administration believes that U.S. Government decisions regarding the Japanese export restraint and the CAFE program should be made on the merits of each issue. While the restraint decision could affect CAFE compliance to a major degree, the reasons for continuing or removing the restraint have little to do with the national energy policy objectives on which the CAFE program is based. Consequently, the Administration does not believe that the policy decision on either issue should be linked automatically or directly to the policy outcome on the other.

Question 5(b)v: If a firm does not meet the CAFE, what will be the effect on future capital investment and R&D spending which is essential to developing new products, modernizing facilities, and increasing productivity?

Answer:

To the extent that elimination of the Japanese export restraint reduces the ability of U.S. producers to comply with post-MY 1984 CAFE standards, future domestic industry profitability would be affected adversely. The potential decline in profits attributable to the CAFE program would result from lower profits on small cars as prices were reduced, on large cars as production volumes were cut, and on total U.S. operations if fines had to be paid due to company noncompliance with the Energy Policy and Conservation Act (EPCA). Civil penalties for noncompliance with the EPCA amount to $5 per vehicle produced for each 0.1 mile per gallon (mpg) a manufacturer falls below the standard. Based on 1984 production levels, such fines would total $370 million for each 1.0 mpg that U.S. Big Three manufacturers fell below the MY 1985 standard if CAFE credits were not available to cover shortfalls. If such shortfalls were large, the impact of CAFE regulations on the domestic industry's profitability could be substantial, reducing the U.S. companies' ability to fund necessary capital investments and R&D spending from internal sources.

Question 6: The Department's analysis "did not" assume a "price war" as a result of ending the VRA. However, it states that it is "likely that consumer prices for Japanese cars will decline "absent VRA, "if only as a result of the elimination of additional markups" by dealers. The extent of such a reduction "easily could increase" Japanese car sales levels that you forecast. What would be the increase? What will be the impact of such an increase on jobs, profits, and CAFE for the domestic industry? Does the Department doubt that a price war will result?

Answer:

The Department did not assume a price war between Japanese producers following removal of the restraint for several reasons. First, the Department believes that elimination of existing restraint-induced dealer premiums alone would be sufficient to support the level of additional Japanese car sales forecasted in its restraint analysis. Further price cuts, while possible, would not be necessary and might not increase Japanese car sales to the same degree as the initial price reductions.

In addition, it is unlikely that small Japanese producers, despite their interest in expanding U.S. market share, would be able to afford a prolonged price war with the larger, and financially stronger, Japanese firms already represented in the U.S. market. Given likely pent-up demand for Japanese products in the first 1-2 years following elimination of the restraint, major sales increases for both small and large Japanese manufacturers could occur without massive price reductions.

If a sustained price war on Japanese cars did occur, U.S. consumers presumably would increase their purchases of Japanese cars beyond the levels estimated in the Department's analysis. Because it is virtually impossible to predict how U.S.manufacturers would respond to this kind of severe challenge, or the scope of any price war (only subcompacts affected or larger cars as well), we are not able to provide valid estimates of the potential sales, profit, CAFE or employment effects of a prolonged price war scenario.

Question 7: The analysis states:

"It should be emphasized that the Department's forecast analysis assumes constant real average variable profits. In an unrestrained market, where higher imports primarily reduce U.S. small car volume, average small car variable profit margins can be expected to drop. Thus, the resultant decline in domestic companies' earnings probably would be more severe than the model forecasts. In addition, companies whose sales are primarily in the small car segment would be affected even more adversely in these circumstances."

How much "more severe" would they be? Which companies "would be affected even more adversely?" What would be the result?

Answer:

The Department's forecast assumes linear revenue and variable cost curves for U.S. auto manufacturers. This technique, which is widely used in linear break-even studies, produces constant average variable profits (although average variable profits in the Department's model vary according to car size class). Most manufacturing companies actually have nonlinear revenue and cost curves. Neither the Department nor outside industry observers have a way of estimating the degree to which unit variable profits change with output. The principal drawback of the linear method is that it becomes less accurate at the extreme low and high ends of production ranges. Since the Department's analysis focuses primarily on output ranges between the two extremes, our results should be reasonable trend indicators.

The Department's analysis states that U.S. auto companies whose sales are primarily in the small car segment would be affected the most.

Question 8: Can the U.S. afford a $7 billion or greater increase in our trade deficit with Japan, particularly if there is no end in sight concerning such increases? Please explain.

Answer:

The $7 billion estimate cited in our analysis referred to the potential increase in the 1987 U.S. import bill from elimination of the Japanese auto export restraint. We do not believe that such an estimate will be totally additive to either our overall trade deficit or that with Japan. If the export restraint is eliminated, this will result in a greater demand for yen to cover increased U.S. purchases of Japanese cars. U.S. dollars will be used by the U.S. distributors of Japanese cars to purchase the yen.

This outflow of dollars and increased demand for yen will, in isolation, cause the dollar to weaken and the yen to strengthen. This will make U.S. products more attractive to Japanese consumers and make Japanese exports more expensive and thus less attractive to U.S. consumers. Since the exact magnitude of these changes in currency values cannot be predicted, we cannot forecast the net effect on our overall trade deficit.

We are very concerned about our trade deficit with Japan and are working hard to reduce it. We believe that the trade deficit should be reduced through increased U.S. exports to Japan, rather than through limitations on Japanese exports to the United States. To this end, we are pursuing vigorously new market access measures with the Japanese. We have been disappointed by the results to date and believe more can and must be done by the Japanese Government to improve our access to the Japanese marketplace.

Question 9: When will the Administration inform the Subcommittee of its decision on the VRA? After preparing the restraint analysis, what is your recommendation concerning the VRA?

Answer:

On March 1, President Reagan announced that the Administration would not request the Government of Japan to extend its restraint on car exports beyond March 31, 1985.

The Cabinet Council on Commerce and Trade and the Trade Policy Committee met on February 19 to discuss the restraint issue. A Cabinet Council recommendation on the U.S. Government's handling of the matter subsequently was forwarded to President Reagan for consideration. The Department's analysis of the Japanese restraint was designed to provide an objective evaluation of the issue, but did not contain any recommendations.

Question 10: Pursuant to section 12(b) of the Chrysler Corporation Loan Guarantee Act of 1979, your Department provided to the Subcommittee a copy of "The U.S. Automobile Industry, 1983," an annual assessment of the state of the automobile industry. However, the report was approved by you on January 11, 1985. Please explain why the report was not released until now. If there were printer delays, please explain them. Also, please explain why copies could not have been transmitted to Congress early in January, even though multiple copies from the printers may not have been available.

Answer:

The Department generally does not release copies of reports it prepares until a final version is available. Because the Executive Branch's annual report on the U.S. auto industry is transmitted to all members of Congress, a single mailing typically is used. Four weeks were required to print and deliver this year's report on the industry to Congress, a period which we consider reasonable.

Question 11: I understand that the VRA does not cover Japanese vehicles shipped to Guam, the Virgin Islands, and the Trust Territories. Reportedly, a large number of Japanese vehicles are being shipped through these areas and are not being counted against the yearly VRA total. I also understand that your Department monitors these shipments. Please explain why the VRA does not cover these vehicles. Please provide a table showing these shipments for the period of the VRA and indicate how and to what extent these vehicles are shipped to the continental U.S. Are these shipments increasing? If so, why? Has this loophole been discussed with the Japanese? What has been the result?

Answer:

The Japanese automobile export restraint does not cover shipments of vehicles to Guam, the Virgin Islands, and the Trust Territories since these areas lie outside of U.S. Customs territory. In contrast, shipments to Puerto Rico, which falls within U.S. Customs territory, are included under a separate restraint measure.

We believe that Japanese car exports which enter the United States as transshipments from U.S. protectorates or third countries have increased as a result of the business activities of independent distributors. The problem has been raised with Japanese Government officials on at least two occasions. Until recently, exports of Japanese cars arriving from U.S. protectorates and third country ports accounted for less than 10,000 units annually. The table below presents annual data on the size of these shipments since the Japanese automobile export restraint began.

U.S. Imports of Japanese Cars and Vans Through Third Countries and U.S. Protectorates*

	Units Imported
First Restraint Year (April 1981-March 1982)	0
Second Restraint Year (April 1982-March 1983)	2,175
Third Restraint Year (April 1983-March 1984)	9,394
Fourth Restraint Year (April 1984-December 1984)	20,334

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* Data are based on date of export from Japan, and thus are incomplete due to lag time for shipments in transit.

Question 12: I note that your Department shares my doubts that the Japanese would constrain exports to the U.S. if the VRA is ended. Should that occur, however, what, if any, antitrust problems might arise?

Answer:

We understand that U.S. antitrust problems could arise if the Japanese Government sought to restrain exports to the United States in an informal manner. We suggest that the Subcommittee contact the U.S. Department of Justice if it would like a more complete analysis of this issue.

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL OF ECONOMIC ADVISERS
WASHINGTON, D.C. 20500

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TO: THE TRADE POLICY REVIEW GROUP

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SUBJECT: Effects of Voluntary Restraint Agreement

INTRODUCTION

This memorandum reports the results of the CEA analysis of the effects on the U.S. automobile market of the Japanese voluntary restraint agreement (VRA) on automobile exports. Because changes in imports of Japanese small cars would affect the demand for U.S. small cars and thus the corporate average fuel economy (CAFE) of U.S. manufacturers, the analysis also examined the effects of U.S. CAFE regulations on the automotive market and the interaction of the VRA and the CAFE regulations.

We examined the effects of changes in these two policies on the following economic variables:

- Prices of U.S. and Japanese automobiles.
- Domestic automobile production and U.S. assemblies of Japanese automobiles.
- New-car average fuel economy for U.S. cars and for U.S. and foreign cars combined.
- Automotive industry employment, including jobs in assembly, parts production, materials supply, and ports.
- Consumer welfare and U.S. and foreign producer earnings.

The analysis is a comparative statics analysis designed to simulate the effects of alternative VRA and CAFE policies. It is based on 1984 market conditions, including both macroeconomic conditions and product offerings of domestic and foreign manufacturers, except that U.S. assemblies of Japanese automobiles are assumed in the base-case scenario to increase to their expected 1985 levels.

The analysis thus isolates the effects of the policies considered, but it is not a forecast of the changes in the market that would take place in the future. Actual future changes will depend not only on changes in these two policies but also on a host of other changes in demand and supply conditions not explicitly incorporated in the analysis. However it is important to note that the restrictive effect of a quota of 1.85 million Japanese exports increases as the U.S. economy grows. Hence to the extent that U.S. growth is anticipated, the quota would have to be increased to maintain the same level of restrictive effects on the total market.

METHOD OF ANALYSIS

MARKET SEGMENTATION: The CEA auto demand model used in the analysis incorporates five market segments, two Japanese and three domestic, based on standard industry classifications of car lines:

o The Japanese and U.S. Basic Small car segments include regular minicompacts (Tercel, Civic) and regular subcompacts (Escort, Cavalier, Sentra, Corolla). These are the less expensive small cars.

o The Japanese and U.S. Luxury Small car segments include specialty subcompacts (Camaro, Mustang, Prelude, RX7) as well as compacts (Reliant K, Tempo, Accord, Stanza). These are the more expensive small cars.

o The U.S. Large car segment includes intermediate and full size cars (Cutlass, full-size Chevrolet, Ford LTD).

In the demand analysis, European cars (about five percent of the market) are included in the "domestic" segments. They are included with Japanese imports in the calculations of economic welfare changes and auto industry employment changes.

CONSUMER DEMAND: On the demand side, the model incorporates the best available information about the responses of consumers to price changes in each market segment. The demand elasticities used in the analysis are displayed in Table 1. The overall price elasticity of demand in the model is -1. Market demand elasticities are highest for the smaller cars and lowest for the larger cars. The model thus accounts for the greater responsiveness of consumers to price changes on basic small cars, and their lesser responsiveness to price changes on more luxurious smaller cars, and also takes account of the fact that there is no U.S.-Japanese competition in the large car segment. The cross price elasticities take into account substitutibility both among size classes and between Japanese and domestic cars. The elasticities and cross elasticities satisfy technical conditions of internal consistency.

PRODUCER RESPONSE: The responses of U.S. and Japanese manufacturers to changes in policy cannot be predicted with certainty. As indicated in Table 1, we have assumed supply elasticities of 2.0 for Japanese imports and U.S. production and a supply elasticity of 1.0 for U.S. assemblies of Japanese automobiles. The 2.0 supply elasticity assumption implies that manufacturers respond to a demand change by changing both price and quantity, but that the percentage change in quantity is twice as great as the percentage change in price. This supply elasticity, in conjunction with the demand elasticities in Table 1, is also consistent with estimates that the Japanese manufacturing cost advantage on small cars is on the order of $2600 at current levels of output and that the effect of the VRA is to increase the price of Japanese cars by about $1200.

The estimated effects of the VRA on imports, domestic production, and prices depend critically on the elasticity of supply. If the actual supply elasticity for imports is larger than 2.0, then Japanese producers would respond to an elimination of the VRA with larger price reductions and greater volume increases than shown in our analysis. Thus, our estimate of the increase in imports without the VRA would be understated. Further, if the actual supply elasticity of domestic production is larger than 2.0, then domestic manufacturers would respond to an elimination of the VRA with smaller price reductions and larger output reductions than shown in our analysis. To check the sensitivity of the simulations to supply elasticities, we also performed an alternative set of computations using assumed supply elasticities of 4.0 for both Japanese imports and U.S. production.

By the end of 1984, Honda's assemblies of Accords in its Ohio plant had reached about 135,000 units per year. It and several other companies plan to add substantially to U.S. assembly capacity in the next few years. In addition, Mazda is expected to import 50,000 GLCs per year from Mexico beginning in 1987. Table 3 displays current and planned future capacity for U.S. assembly of Japanese automobiles, based on manufacturers announcements. We assumed 260,000 assemblies in the base case, somewhat less than expected 1985 capacity of 275,000 units, and an elasticity of supply of 1.0. Thus the analysis captures short-run responses to changes in market prices but does not incorporate changes in assembly capacity plans in response to VRA or CAFE changes.

EMPLOYMENT EFFECTS: Effects on automotive industry employment were estimated using cars-per-job multipliers, shown in Table 1, for the three classes of domestic cars, U.S. assemblies of Japanese cars, and imports. These factors capture the employment effects on assemblers, first and second tier parts suppliers, and materials suppliers. The factor for imports captures the effect on port employment.

In the long run, any effects on total employment in the economy of a change in VRA or CAFE regulations would likely be negligible. Workers released from automotive industries eventually would be absorbed in other industries. Automotive industry employment change estimates are nonetheless of interest because they indicate the magnitude of adjustment involved and because automotive workers are a highly visible constituency group.

CONSUMER AND PRODUCER WELFARE EFFECTS: Gains to consumers were estimated by changes in consumer surplus. Changes in earnings of domestic and foreign producers were estimated by changes in producer surplus.

TRADE BALANCE: The overall balance of merchandise trade depends largely on macroeconomic conditions and little, if at all, on conditions in individual product markets. Thus, an increase in automobile imports following a lifting of the VRA would cause the dollar to depreciate by enough, other things equal, to offset the increased automotive imports with increased exports and reduced imports of other goods and services.

CAFE REGULATIONS: In order to estimate the interaction of the VRA and CAFE regulations, an elimination of the VRA was analyzed under two alternative assumptions about the CAFE regulations:

1. CAFE standards are relaxed sufficiently to be non-binding. This implies that U.S. manufacturers respond to increased import competition by greater specialization in large cars.

2. CAFE regulations are continued. U.S. manufacturers reprice their cars so as to maintain a market mix yielding a fleet average of 26.0 mpg. The actual fleet average for the model year 1984 domestic cars was 25.3 mpg, even though current regulations specify a CAFE standard of 27.0 mpg for model year 1984 and 27.5 mpg for model year 1985 and thereafter. General Motors and Ford are not meeting the standard, but they have complied with the law by carrying forward credits earned in previous years and borrowing credits from future production. Although this scenario captures some of the effect of the CAFE regulation, it underestimates the full effect of the 1984 or 1985 standards, barring marked improvements in the fuel economy of specific car classes.

INITIAL CONDITIONS: The initial conditions used as a base case scenario are displayed in Table 2, along with actual conditions in model year 1984. We have assumed that demand and supply conditions identical to actual model year 1984 conditions, except for imports and U.S. assemblies of Japanese automobiles. Because the VRA year begins in April, actual model year imports may not exactly match the quota level; we have assumed model year imports of 1.85 million rather than the actual 1.885 million units that were imported in model year 1985. Actual assemblies were 117,000 for model year 1984 and 134,000 for calendar year 1984. In the analysis, we assumed total assemblies of 261,000 units, consistent with 1985 capacity plans displayed in Table 3. This results in an increased supply of 144,000 U.S assembled Japanese automobiles over model year 1984 sales.

RESULTS OF THE ANALYSIS

Tables 4 and 5 display the results of the analysis, assuming respectively that CAFE standards are relaxed so as to be nonbinding and that domestic manufacturers reprice their small and large cars so as to achieve a domestic fleet average of 26.0 mpg.

SCENARIO 1 - VRA ELIMINATED, CAFE REGULATION NONBINDING: Table 4 shows Japanese imports about 690,000 units higher and U.S. assemblies about 35,000 units lower than the base case. Prices of Japanese imports fall about $1200. U.S. producers lose about 240,000 sales, 200,000 small cars and 40,000 large cars. Prices of U.S. small cars decrease by about $260, while prices of U.S. large cars are virtually unchanged. The Japanese share of the market increases from 18.2 percent to 28.2 percent in this scenario.

In this scenario, the elimination of the VRA increases the supply of Japanese cars and depresses prices and sales of U.S. small cars, but has a much more modest effect on the large car market. The U.S. fleet average fuel economy falls, but only by 0.1 mpg, to 25.2 mpg. Because the increase in sales of Japanese small cars is greater than the decrease in sales of U.S. small cars, the average mpg of all cars sold increases 0.4 mpg, from 26.7 to 27.1 mpg.

Consumers gain about $4.1 billion in this scenario, 3.0 billion on Japanese cars and $1.1 billion on U.S. cars. U.S. producers lose 1.1 billion in earnings, eighty percent of which is lower earnings on small cars. Earnings of foreign producers fall by $2.2 billion, 98 percent of which is borne by Japanese producers. U.S. automotive industry employment is about 30,000 lower. Consumer gain is about $136,000 per automotive job reduced.

To check the sensitivity of the results to the supply elasticity assumption, we performed alternative simulations setting the supply elasticities of Japanese imports and U.S. production equal to 4.0, rather than 2.0. This alternative assumption results in a price reduction for Japanese cars of about $1600, and an increase in imports of 960,000 units. Total production of U.S. cars falls by 450,000 units, and prices of U.S. small cars fall by about $200. Compared to the results reported in Table 4, the increase in Japanese imports is about 40 percent greater and the reduction in U.S. output almost twice as great.

SCENARIO 2 - VRA ELIMINATED, U.S. FLEET MPG INCREASES TO 26.0: Table 5 shows Japanese imports about 620,000 units higher and U.S. assemblies about 38,000 units lower than the base case in this scenario. Prices of Japanese imports fall about $1500 for basic small cars and $1100 for luxury small cars. To shift market mix from large to small cars, and to respond to the increased supply of Japanese cars, U.S. producers reduce prices of basic small cars by about $1,000 and prices of luxury small cars by about $300, while increasing large car prices nearly

$500. Sales of U.S. basic small cars increase by about 550,000 units, while sales of U.S. luxury small cars and large cars decrease by 30,000 and 520,000 units respectively, offsetting the increase in small car sales. The Japanese share of the market increases from 18.2 percent to 25.1 percent in this scenario.

In this scenario U.S. manufacturers reprice their cars to shift sales from large to small cars in the face of increased supplies of Japanese imports, increasing the average fuel economy of the U.S. fleet from 25.3 mpg to 26.0 mpg. Average fuel economy of all cars sold increases from 26.7 mpg to 27.6 mpg, an increase of 0.9 mpg, reflecting both the increase in Japanese small car sales and the 0.7 mpg increase in U.S. fleet fuel economy.

Consumers gain about $3.7 billion in this scenario, $3.2 billion on Japanese cars. In the U.S. car market, consumers gain $2.4 billion in the small car segments but lose $1.9 billion from the increase in large car prices, for a net gain of $0.5 billion on U.S. cars.

This scenario also shows U.S. producer earnings falling by $1.5 billion. Small car earnings fall by $3.1 billion, but large car earnings increase by $1.6 billion. Foreign producer earnings are also lower than in the base case, by about $2.4 billion. U.S. automotive industry employment is about 11,000 lower. Consumers gain about $326,000 per automotive job reduced.

To check the sensitivity of the results of this scenario to the supply elasticity assumption, we again performed alternative simulations setting the supply elasticities of Japanese imports and U.S. production equal to 4.0, rather than 2.0. This alternative assumption results in a price reduction of about $1800 for Japanese basic small cars and $1500 for Japanese luxury small cars, and an increase in imports of 840,000 units. This increase is about 35 percent greater than that shown in Table 5. Sales of U.S. basic small cars increase by 540,000 units and prices fall by about $1100 per unit, roughly equal to the amounts shown in Table 5, but a greater reduction in large car sales results in a net loss of 130,000 U.S. sales.

Table 1: Parameters Used in the Analysis

Demand Elasticities

	Japan. Bas.Sm.	Japan. Lux.Sm.	U.S. Bas.Sm.	U.S. Lux.Sm.	U.S. Large
Japanese Basic Small	-4.00	0.83	2.74	1.15	1.13
Japanese Luxury Small	0.37	-3.50	0.62	1.63	2.57
U.S. Basic Small	0.83	0.42	-4.00	0.64	0.63
U.S. Luxury Small	0.24	0.77	0.45	-3.50	1.85
U.S. Large	0.02	0.10	0.04	0.16	-2.50

Supply Elasticities

	Japanese Cars	
U.S. Production	Imports	U.S. Assemblies
2.0	2.0	1.0

Employment Factors (Cars per Job)

U.S. Production				
Bas.Sm.	Lux.Sm.	Large	Japanese Imports	U.S. Assemblies
8.1	7.3	6.6	234	31

Table 2: Initial Conditions

	Model Year 1984 Market	Base Case Scenario
SALES (000)		
Japanese Cars		
Imports		
Basic Small Cars	915	882
Luxury Small Cars	969	969
Subtotal	1,885	1,851
U.S. Assemblies		
Basic Small Cars	0	121
Luxury Small Cars	117	140
Subtotal	117	261
Imports and Assemblies		
Basic Small Cars	915	1,003
Luxury Small Cars	1,087	1,109
Subtotal	2,002	2,112
European Imports		
Basic Small Cars	36	36
Luxury Small Cars	71	70
Large Cars	180	180
Subtotal	287	286
U.S. Cars		
Basic Small Cars	1,691	1,671
Luxury Small Cars	1,788	1,774
Large Cars	4,320	4,314
Subtotal	7,799	7,759
All Cars		
Basic Small Cars	2,642	2,710
Luxury Small Cars	2,945	2,953
Large Cars	4,500	4,494
Total	10,087	10,157
PRICES ($)		
Japanese Basic Small	$7,600	$7,350
Japanese Luxury Small	$11,700	$11,540
U.S. Basic Small	$7,900	$7,850
U.S. Luxury Small	$10,000	$9,960
U.S. Large	$12,400	$12,390

TABLE 3: U.S. ASSEMBLIES OF JAPANESE AUTOMOBILES

	1984	1985	1986	1987
BASIC SMALL CARS				
Honda Civic			75	150
Nissan Sentra		25	100	100
NUMMI Nova (GM-Toyota)		100	200	250
Subtotal	-0-	125	375	500
LUXURY SMALL CARS				
Honda Accord	150	150	150	150
Mazda 626				50
Subtotal	150	150	150	200
TOTAL	150	275	525	700

Table 4

SCENARIO 1 - VRA ELIMINATED, CAFE REGULATION NONBINDING

	PRICE ($)	SALES (000)	IMPORTS (000)	U.S. ASSEMBLIES (000)
Japanese Basic Small	6110	1412	1312	100
Japanese Luxury Small	10340	1355	1229	126
Subtotal		2767	2541	226
European Imports		278	278	
U.S. Basic Small	7590	1560		
U.S. Luxury Small	9700	1682		
U.S. Large	12340	4278		
Subtotal		7519		
Total		10564	2819	226

U.S. Fleet MPG	Total Fleet MPG
25.2	27.1

---------------------CHANGE FROM BASE CASE------------------------------

	PRICE ($)	SALES (000)	IMPORTS (000)	U.S. ASSEMBLIES (000)
Japanese Basic Small	-1240	409	430	-21
Japanese Luxury Small	-1200	246	260	-14
Subtotal		655	690	-35
European Imports		-8	-8	
U.S. Basic Small	-260	-112		
U.S. Luxury Small	-260	-92		
U.S. Large	-50	-36		
Subtotal		-240		
Total		415	682	-35

U.S. Fleet MPG	Total Fleet MPG
-0.1	0.4

CHANGE IN ECONOMIC WELFARE ($billion)				Automotive Employment Reduction	Consumer Gain per Auto Job Reduced
U.S. Consumers	U.S. Producers	U.S. Total	Foreign Producers*		
4.12	-1.10	3.02	-2.20	30,300	$135,700

* Includes European imports.

Table 5

SCENARIO 2 - VRA ELIMINATED, U.S. FLEET CAFE SET AT 26.0 MPG

	PRICE ($)	SALES (000)	IMPORTS (000)	U.S. ASSEMBLIES (000)
Japanese Basic Small	5000	1326	1229	97
Japanese Luxury Small	10400	1369	1243	126
Subtotal		2695	2472	223
European Imports		275	275	
U.S. Basic Small	6840	2208		
U.S. Luxury Small	9600	1750		
U.S. Large	12850	3816		
Subtotal		7774		
Total		10744	2747	223

U.S. Fleet MPG	Total Fleet MPG
26.0	27.6

----------------------CHANGE FROM BASE CASE--------------------------

	PRICE ($)	SALES (000)	IMPORTS (000)	U.S. ASSEMBLIES (000)
Japanese Basic Small	-1470	323	347	-24
Japanese Luxury Small	-1140	260	274	-14
Subtotal		583	621	-38
European Imports		-10	-10	
U.S. Basic Small	-1810	536		
U.S. Luxury Small	-280	-24		
U.S. Large	460	-498		
Subtotal		14		
Total		597	611	-38

U.S. Fleet MPG	Total Fleet MPG
0.7	0.9

CHANGE IN ECONOMIC WELFARE ($billion)					
U.S. Consumers	U.S. Producers	U.S. Total	Foreign Producers*	Automotive Employment Reduction	Consumer Gain per A Job Reduced
3.69	-1.51	2.18	-2.40	11,300	$326,400

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Attachment to Question 1

THE U.S. ASSESSMENT OF JAPANESE GOVERNMENT "EXTERNAL ECONOMIC MEASURES"

INTRODUCTION

This report assesses Japan's implementation to date of commitments contained in five sets of "external economic measures" which the Japanese Government has announced over the past three years, and evaluates the impact of those commitments as market opening measures.

The report discusses Japan's commitments in the context of the markets or sectors they were intended to liberalize. The description of Japanese liberalization commitments is divided into three parts for each market. First, we identify the market opening commitments that were contained in each trade initiative. Second, we describe the implementation to date of those commitments. Finally, we evaluate the effect that the implementation of these commitments has had on market access, and identify any remaining barriers to trade in that market. The appendix contains a brief description of Japan's five sets of "external economic measures."

This report is not intended to comprise a catalogue of every bilateral trade commitment made by the Japanese Government over the past three years. Japan has made a number of market opening commitments outside of the context of the five trade initiatives. Instead, this report focuses on the "external economic measures" as the most visible and comprehensive Japanese Government attempt to address the concerns of the United States and Japan's other trading partners regarding the need for increased foreign access to the Japanese market.

By focusing on the Japanese Government's unilaterally issued "external economic measures," however, this report necessarily excludes some issues of interest to the United States on the U.S.-Japanese bilateral trade agenda. Because the trade initiatives have been presented as comprehensive sets of market opening measures, addressing issues of interest to all of Japan's trading partners, the Japanese Government has been selective in its response to U.S. concerns, and several outstanding bilateral issues have never been addressed in the trade initiatives.

The U.S. Government compiled a comprehensive list of Japanese trade barriers in a report released in November 1982, entitled "Japanese Barriers to U.S. Trade and Recent Japanese Government Trade Initiatives." An update of that report is in progress. We refer the reader to that report or its update for a full description of impediments to market access in Japan.

OVERVIEW

The goal of U.S. trade policy towards Japan has been to achieve access for U.S. goods, services, and investment in the Japanese market equal to that enjoyed by Japan in the U.S. market. One of the stated purposes of Japan's "external economic measures" has also been to improve the access of foreign products, investment and services to the Japanese market. This goal is reflected in statements accompanying several of Japan's trade initiatives:

> "These measures have been designed with the overall aim of firmly maintaining the free trading system and contributing to the revitalization of the world economy through achieving an expansion of trade on a balanced basis...Japan's market opening measures are not only a demonstration of Japan's commitment to this system, but also willingness to assume equivalent domestic political risks in support of this system." (January 13, 1983)
>
> "...by taking various steps...the Government intends to move beyond mere market opening into the realm of active import promotion." (October 21, 1983)
>
> "Japan has steadfastly implemented the series of economic measures hitherto decided upon, thus making efforts in opening its markets and promoting imports." (April 27, 1984)

It is thus appropriate to review these commitments and their implementation in the context of the degree to which they have improved foreign access to the Japanese market.

The scope for increasing Japan's imports of primary products is limited; thus, the goal of many of Japan's market opening measures has been to increase imports of manufactured products. Between 1980 and 1983, Japan's share of manufactured imports as a percent of total imports increased about 3 percent, from 21 to 24 percent. Japan's manufactured imports rose in value from $30 to $31 billion over this period. Japan's imports of manufactured products from the U.S. increased from approximately $10.1 billion in 1980 to $11.8 billion in 1983.

Most of the increase in Japan's ratio of manufactured imports to total imports, however, resulted from an absolute decline in total and non-manufactured imports. Furthermore, the rise in the value of Japan's manufactured imports largely reflected price increases.

The increase in Japan's manufactured imports from the United States also cannot be directly linked to Japan's market opening measures. First, bilateral trade flows are influenced by a wide range of factors, such as exchange rates and divergent economic cycles, and thus it is difficult to isolate the effects of individual market opening measures. Second, many of the Japanese Government's trade liberalization measures have not yet been fully implemented, so their impact has not been felt. Finally, U.S. exporters cannot expect to reap the full benefits of market opening measures, as third country exporters also benefit from such policies. Therefore, this report evaluates Japan's market opening actions by assessing the extent to which they have created new opportunities in the Japanese market for U.S. exporters and investors.

On the whole, Japan's external economic measures have improved foreign access to the Japanese market. However, significant barriers to trade remain in a number of sectors.

Some of the commitments announced by the Japanese Government could remove key barriers to market access and result in substantially expanded market opportunities for foreign exporters and investors. These commitments, which concern Japan's tobacco, telecommunications and financial services markets, have all been made within the last year, however, and their market opening impact will depend very heavily on the manner in which they are implemented.

The primary barrier to foreign penetration of the Japanese tobacco market has been the presence of the Japan Tobacco and Salt Public Monopoly Corporation (JTS), a government monopoly controlling pricing and distribution in the Japanese manufactured tobacco market. Early Japanese commitments to reduce tariffs and expand retail distribution outlets available to foreign brands were implemented, but have had little effect on the U.S. share of the Japanese market. In April 1984, the Japanese Government announced that it was submitting legislation to the Diet which would end the JTS monopoly and liberalize the Japanese tobacco market. The market opening impact of this legislation, which will take effect on April 1, 1985, will depend very heavily on the manner in which it is implemented.

U.S. penetration of Japan's telecommunications equipment and services markets has been kept low due to the presence of another government monopoly, the Nippon Telegraph and Telephone Public Corporation (NTT). Also in April, the Japanese Government announced that it was submitting legislation to the Diet to privatize NTT and liberalize the Japanese telecommunications market. The actual impact of this legislation, once passed, will also depend on the manner in which it is implemented.

Commitments in the trade initiatives have resulted in partial market opening in the areas of standards, tariffs, agricultural quotas, customs procedures, NTT procurement, direct investment, and energy.

All five announcements have included commitments to liberalize Japanese standards and certification practices. Although the statutory framework for implementing the Japanese Government's commitments has been completed, full implementation at the administrative level has not yet been achieved. Because progress has been slow, many of the policy pronouncements included in recent announcements repeat previous commitments regarding standards and certification.

Tariff reductions have also been included in each of the five sets of external economic measures. Although Japan has the lowest average overall tariff rate in the industrialized world, tariffs on individual items remain high, particularly on certain manufactured and high value-added agricultural products. Japan has reduced tariffs on items of significant trade interest to the United States. However, many tariff cuts included in the trade initiatives have been of only marginal benefit for U.S. exporters, due to the small size of the reductions or the low volume of U.S. exports of affected products. Many items remain on which tariff cuts would afford a significant increase in market opportunities for U.S. exporters.

The Japanese Government has begun to implement its commitments to expand agricultural quotas. In announcing measures to expand its beef and citrus quotas in August 1984, the Japanese Government addressed the leading agricultural trade issue between the United States and Japan. However, the United States is still seeking a commitment from the Japanese Government to eliminate its residual import restrictions on all agricultural products.

Japanese Government commitments to improve customs procedures have also been implemented, but have had only a marginal impact because the problems addressed by the commitments have not constituted significant market impediments for U.S. exporters. The Japanese Government has expressed little willingness to study a U.S. suggestion that Japanese Government ministries delegate more clearance authority to Japanese Customs so as to expedite clearance procedures.

Included in the external economic measures has been a Japanese Government commitment to improve NTT procurement practices, through implementation of the bilateral agreement with the United States covering NTT procurement practices. NTT has implemented the technical and procedural aspects of the Agreement, but the United States believes that further progress can be made in increasing NTT's procurement of sophisticated core network telecommunications equipment from U.S. firms.

The Japanese Government has implemented commitments to improve procedures for approving and facilitating foreign direct investment. However, the U.S. Government believes that it would be helpful for the Japanese Government to improve further the investment climate, which would enhance the ability of U.S. investors to compete in Japan and, thus, stimulate greater investment flows.

On energy, the Japanese Government has implemented commitments to send a private sector coal mission to the United States and to encourage energy feasibility studies. However, meaningful commitments to increase purchases of U.S. coal or gas have not yet materialized.

Areas in which Japanese commitments have not been specific or remain unimplemented include government procurement, services, and import promotion.

In its October 1983 trade initiative, the Japanese Government made a commitment to ensure that its government procurement practices are in conformity with the GATT's Government Procurement Code. However, Japanese Government agencies continue to use single-tendering procedures extensively.

The only commitment included in the Japanese trade initiative affecting services was a commitment to "work toward an appropriate solution" on legal services. A number of services issues remain unaddressed, including Japanese restrictions on the use of maritime high cube containers, the inability of U.S. shipping lines to obtain contracts for shipment of leaf tobacco, and restrictions on the access of U.S. firms to Japan's Bank Related Credit Card Association.

Japanese trade initiatives have included a variety of import promotion measures, including the creation of an Office of Trade Ombudsman to respond to foreign complaints regarding market barriers, import promotion missions, and high-level statements encouraging increased imports of manufactured products. The practical effect of such actions and statements is impossible to evaluate, however, because they have never been accompanied by any yardsticks with which to evaluate their success.

Finally, the most recent set of external economic measures included two statements which were not market opening measures, per se, but which dealt with two areas of primary importance to the United States.

The first statement was that foreign satellite procurement by Japanese Government agencies would be permitted, subject to considerations of "consistency with the national space development policy." The U.S. Government has sought clarification of this condition, but so far the Japanese Government has not responded to this request. It remains to be seen whether this policy statement will lead to purchases of foreign-manufactured satellites.

The second statement noted the Japanese Government's decision to delay the introduction to the Diet of a proposal to eliminate copyright protection for computer software, and to consider "international harmony" in developing new proposals. No commitment was made to abandon the proposal.

INDUSTRIAL TARIFFS

I. JAPANESE MARKET OPENING COMMITMENTS

Trade Initiative of December 16, 1981

The Japanese Government announced it would accelerate implementation of Japan's Tokyo Round tariff reductions which were scheduled for 1983 and 1984. This measure affected 1,653 items, of which 1,539 were mining and manufactured products. The tariff acceleration covered about 43% of all Japan's dutiable imports. As a result, the average tariff rate of the affected items was reduced from 8% to 6.75%. Among the non-agricultural products covered were computers, integrated circuits, scotch whiskey, aluminum ingots, tungsten, golf balls and some auto parts.

Trade Initiative of May 28, 1982

The Japanese Government announced it would eliminate tariffs on 96 industrial products, including certain machine tools, cut diamonds, some domestic appliances (air conditioning equipment, refrigerators, vacuum cleaners, washing machines and microwave ovens), watches, boilers and turbines, electric generators, digital calculating machines, televisions and electric generators. This increased the number of industrial products that enter Japan duty free to about 550.

The Japanese Government reduced rates on 102 industrial items, including computers, nuclear reactors, telephone switchboards, and medical and diagnostic equipment, on an accelerated schedule. The 7% tariff rate on computers and 8.7% rate on computer parts were jointly reduced to 4.9%. Duties on computer peripherals dropped to 6%. The Japanese Government also reduced tariff rates two years ahead of schedule on several other industrial products (automotive tires, catalytic agents and steel) to levels below the proposed rates agreed upon in the Tokyo Round. Some 36 articles, such as lighters, eyeglass frames and ballpoint pens, were no longer subject to a surcharge. As a result, the average tariff rate on the affected 198 industrial items fell from 6.2% to 3%, and the average tariff rate for all industrial products fell from 3.45% to 3.27%.

Trade Initiative of December 25, 1982

The Japanese Government announced that it would reduce or eliminate tariffs on 28 industrial products. Japan's kraft paper tariff was reduced from 11.8% to 9.3%. Other items receiving a tariff reduction included blank magnetic tapes, cash registers and paperboard. The 5.9% tariff on farm tractors and the 7.5% tariff on numerically controlled machine tools were completely eliminated. The duty exemption on several other types of farm equipment (hay balers, mowers, harvesters, feeders and silos) was extended until 1986. The May and December tariff packages together affected 11% of all Japan's dutiable imports.

Trade Initiative of October 21, 1983

The Japanese Government announced that it would reduce or eliminate tariffs on 47 items, including paper products and agricultural machinery. In particular, the 13.1% particleboard tariff was reduced to 12%, and the 11.6% tariff on wrapping paper fell to 9.3%. Japan offered to eliminate its tariffs on semiconductors if the United States would do the same. In addition, Japan committed itself to accelerating scheduled Tokyo Round tariff reductions on 1,280 items, most of which were manufactured products, by one year. The package covered 27.6% of all Japanese dutiable imports.

Trade Initiative of April 27, 1984

The Japanese Government announced it would reduce or eliminate tariffs on 31 industrial items. Tariffs will be reduced on color photographic film and kraft paper. The Japanese bottled wine tariff (which varies according to price) will also be reduced, although the tariff reduction will be accompanied by an excise tax increase. Japan also proposed advanced implementation by two years of its scheduled Tokyo Round reductions on 1,130 industrial products if the European Community and the United States would do likewise. Furthermore, Japan committed itself to expand the number of items allowed duty-free entry under the GATT Agreement on Trade in Civil Aircraft.

II. IMPLEMENTATION OF COMMITMENTS

Tariff cuts announced on December 16, 1981, were implemented on April 1, 1982. Tariff cuts announced on May 28, 1982, and December 25, 1982, were implemented on April 1, 1983. Reductions announced on October 31, 1983 were implemented on April 1, 1984. However, elimination of Japan's semiconductor tariff still awaits implementation of parallel U.S. legislation.

The tariff cuts announced on April 27, 1984, will be deliberated by Japan's Tariff Deliberation Council, which makes the final decision on all tariff changes, when it holds its annual meeting in December. There is no reason to believe that the Council will not endorse the announced tariff reductions, which would become effective on April 1, 1985. The Diet has already passed legislation to expand the list of duty free civil aircraft items beginning January 1, 1985. Japan's willingness to accelerate its Tokyo Round Tariff reductions is dependent upon similar action by the United States and the EC. The Congress has not yet passed such legislation.

III. APPLICABILITY TO U.S. INTERESTS

Japan has the lowest average tariff rate in the industrialized world; Japan's average tariff rate is 2.5%, compared to the Euopean Community's average rate of 2.6%, and an average rate of 3.2% for the United States. However, certain Japanese tariffs for manufactured (and value-added agricultural) products remain high, and inhibit penetration of the Japanese market by competitive foreign imports. In response to U.S. concerns, Japan has included unilateral tariff reductions in each of its five sets of market opening measures. These tariff reductions have been of interest to all of Japan's trading partners, and have not exclusively benefitted U.S. exporters.

The impact of the tariff accelerations announced in December 1981 was thought to have only a marginal impact on U.S. exports to Japan.

Tariff reductions in the May 1982 trade initiative which were of particular interest to U.S. exporters included computers and related items, photographic film, medical equipment and machine tools. The impact of many of the reductions, however, was regarded as limited since foreign companies would have to compete for market share with highly competitive Japanese producers of these items. Moreover, since the affected tariffs were generally already quite low, further reductions probably had a limited impact on trade.

Although the December 1982 tariff concessions covered roughly $180 million in U.S. industrial products exports to Japan in 1981, the tariff cuts were too small to spur increased exports. The concessions on paperboard and kraft paper, for example, affected meaningful levels of bilateral trade, but ranged from only one to three percentage points on existing tariffs which were in a range of six to twelve percent. Another tariff reduction of interest to the United States affected magnetic tape. The elimination of tariffs on numerically controlled machine tools was regarded as a response to the pending Houdaille trade petition. The continuation of the tariff exemption on certain agricultural equipment was a response to a U.S. request.

Approximately 14 of the 47 industrial products tariff reductions contained in the October 1983 trade initiative were of existing trade interest to the United States. Of special interest were the tariff reductions on wrapping paper and particleboard. In general, however, the tariff reductions were quite shallow and, at most, may have had a slight positive impact on U.S. exports. Elimination of Japan's semiconductor tariffs would significantly assist U.S. exports of similar products.

When implemented, the April 1984 tariff reductions will reduce or eliminate certain tariffs in several areas of real trade interest to the United States, including photographic film, farm machinery and alcoholic beverages. Of the 31 tariffs on manufactured products on the list, 25 are of interest to the United States. These items account for roughly $500 million in 1983 U.S. exports to Japan. Other tariff reductions of U.S. interest include hay balers, unwrought magnesium, and auto emission catalysts. The tariff reductions in the April package, the most comprehensive to date, will have a positive impact on U.S. exports. The effect of the cuts on individual items will depend upon specific price elasticities. A major disappointment of the April 1984 initiative, however, was continued inaction on repeated U.S. request for tariff cuts on other products, notably forest products.

Subsequent to the announcement of the April initiative, the U.S. Government submitted an updated list of tariff reduction requests to the Japanese Government. This list included outstanding requests, in addition to requests for tariff cuts on several new items which would increase market opportunities for U.S. exporters, such as wrought and unwrought aluminum and aramid fiber.

AGRICULTURAL TARIFFS

I. JAPANESE MARKET OPENING COMMITMENTS

Trade Initiative of May 28, 1982

In early May 1982, the U.S. Government provided a tariff reduction request list to Japan which included 93 categories of agricultural products. The total value in 1981 of Japan's imports in these categories was over $1,075 million.

On May 28, 1982, the Japanese Government offered to accelerate tariff cuts to the final MTN rate for several items on the U.S. request list and to unilaterally reduce the duty on other items. Of the 15 agricultural items covered in the trade initiative, the tariff cuts on seven items fully met the U.S. request. Among the products on which tariff cuts were accelerated were: turkey meat, lemons and limes, sweet almonds, macadamia nuts, soybean oil, corn oil, chocolate confectionery products, pastry biscuits, lemon and lime juice, and salad dressings. The Japanese Government offered to reduce tariffs below the final MTN rate (though still higher than the requested U.S. cuts) on duck meat, pistachios, and peanut butter.

Trade Initiative of December 25, 1982

The Japanese Government announced tariff reductions on a total of 60 agricultural products. Of particular note were the large tariff reductions on chocolate confectionery and biscuits with sugar. Some 18 items in the package, including a number of horticultural products and brandy, were not on the U.S. tariff request list.

Trade Initiative of October 21, 1983

This initiative included tariff reductions on three agricultural products: boneless chicken, bananas and palm oil.

Trade Initiative of April 27, 1984

This initiative included tariff reductions on 32 agricultural products. Twenty of these cuts constitute new tariff reductions, while the remaining twelve cuts are accelerations of the final Tokyo Round tariff reductions.

II. IMPLEMENTATION OF COMMITMENTS

The tariff reductions announced in May 1982 and December 1982 became effective on April 1, 1983. The reductions announced in October 1983 became effective on April 1, 1984. The cuts announced in the April 1984 trade initiative are expected to become effective on April 1, 1985.

III. APPLICABILITY TO U.S. INTERESTS

The total value of Japan's imports of agricultural products covered by tariff reductions announced in the May 1982 trade initiative was $146 million. The average duty on these items was reduced from 19.4% to 16.9% (excluding the specific duties on corn oil and soybean oil). Before the cuts, tariffs on these items ranged from 5.9% to 36.3%. After the cuts, this range was 4% to 34%.

The December 1982 trade initiative covered $152 million in U.S. exports of agricultural products to Japan in 1981. The tariff cuts reduced the average tariff on these items from 14.5% to 11.8%. Before the cuts, the tariffs on these items ranged from 1.9% to 33%. After the cuts, this range was 0% to 30%.

It is not possible to assess the precise impact of the tariff cuts contained in the 1982 trade initiatives due to the incremental nature of the reductions. The impact of these cuts, if any, has probably been minor.

Although one of the three agricultural categories included in the October 1983 tariff cuts was on the U.S. tariff reduction request list (boneless chicken), the decrease in the duty from 20% to 18% on this product will primarily benefit Southeast Asian producers. The value of Japan's imports of boneless chicken from the United States in 1981 was $25.5 million. The impact of these tariff cuts on U.S. exports is expected to be small.

The 1982 value of U.S. exports to Japan of agricultural products on which tariff cuts were announced in the April 1984 trade initiative was $460 million. While the overall impact of these cuts on U.S. agricultural exports is expected to be minor, some items may benefit measurably from the cuts, including meat products, whey, peanut butter, soy protein and canned corn.

The U.S. Government recently submitted an updated tariff reduction request list to the Japanese Government, which includes requests for tariff cuts on 50 agricultural items. Included on this list are fresh grapefruit, walnuts and wine.

AGRICULTURAL QUOTAS

I. JAPANESE MARKET OPENING COMMITMENTS

Trade Initiative of April 27, 1984

As the result of numerous bilateral consultations over the past two years, the Japanese Government announced the elimination of quotas on hi-test molasses and other sugars, certain fruit purees and pastes, some fruit pulps, selected fruit juices, and various other food preparations containing added sugar. Import quotas on prepared and preserved pork will be eliminated in Japan Fiscal Year 1985 (which begins on April 1, 1985), while quotas on grapefruit juice will be eliminated in Japan Fiscal Year 1986.

The Japanese Government will retain import quotas, but expand their size, on beef, fresh oranges, orange juice, peanuts, non-citrus fruit juices, tomato ketchup and sauce, as well as a number of other value-added agricultural products.

II. IMPLEMENTATION OF COMMITMENTS

Japan is now beginning to implement its commitments to expand its agricultural quotas. Some U.S. followup may be necessary to ensure that certain aspects of Japan's trade liberalizing measures are implemented on schedule.

III. APPLICABILITY TO U.S. INTERESTS

The estimated value of increased beef and citrus trade as a result of Japanese measures to liberalize imports is approximately $400 million over the next four years. It is too soon to make a precise assessment of the impact of Japan's liberalization of other import quotas. However, the U.S. Government estimates that U.S. exports will increase by several million dollars.

As a result of Japan's actions expanding its agricultural import quotas, the U.S. has postponed for two years its GATT action against Japan on 13 of the 18 agricultural categories subject to import quotas. In Japan Fiscal Year 1987 the U.S and Japanese governments will again discuss liberalization of Japan's beef and citrus imports.

The U.S. objective in this area is complete elimination of Japan's import quotas in 18 agricultural categories. The U.S. believes these quotas have been inconsistent with GATT rules since 1963.

STANDARDS

I. JAPANESE MARKET OPENING COMMITMENTS

Trade Initiative of January 30, 1982

This initiative included a list of 99 trade problems, 94 of which were standards-related. The Japanese Government took measures to resolve only 10% of these issues. Specific standards issues which were addressed included:

- Sporting goods: Guidance will be given to sports organizations to accept foreign-made products.
- Cosmetics: Foreign test data will be accepted. Registration procedures for formula changes will be simplified. Approval procedures will be simplified.
- Health care: Permission for transfer of manufacture and import licenses among enterprises will be given. Foreign non-clinical test data will be accepted.

Trade Initiative of May 28, 1982

Transparency

- Foreign participation in standards drafting committees will be allowed.

Specific products

- Sporting goods: Further official guidance will be given to sports organizations directing national treatment, conformity with international standards, simplification of inspection procedures, and publication of standards and approval system.
- Cosmetics: Additions were made to list of approved ingredients. JCIA will publish ingredients. Registration for minor formula changes and name changes will be simplified. Foreign animal test data will be accepted.
- Pharmaceuticals: Toxicity test standards will be clarified. Standards for drugs for material use will be established. Foreign animal test data will be accepted.

Trade Initiative of January 13, 1983

A review of standards and certification systems was announced. The review resulted in further commitments to improve Japan's standards and certification system, announced on March 26, 1983. These commitments are described below.

General provisions

- To amend laws to prevent discrimination against foreign firms. Foreigners will apply for and receive certification directly, and receive equal treatment in testing methods.
- To simplify certification procedures for motor vehicles, pharmaceuticals, medical devices, electrical appliances, and animal and plant quarantine.
- To simplify pre-import procedures.

Transparency

- To compile and publish a directory of standards-drafting and revising activities, and to provide notification of such activities through government and private sector publications.
- To provide a mechanism for comment from the outset of the standards drafting process.
- To extend the Standards Code comment period from 45 days to 9 weeks.
- To take steps to ensure that transparency, non-discrimination, and conformity with international standards are maintained in non-governmental standards drafting bodies.

Specific products

- Chemicals: To work towards early introduction of Good Laboratory Practice standards (GLPs).
- Plywood: Standards revised. New standard will be adopted on plywood with "white pocket."
- Electric appliances: To accept foreign inspection data.

- Cosmetics: List of additional permissible ingredients will be published. Consumer preference testing will be permitted as of April 1983.

- Health care: Transfer of approval for imports among enterprises will be simplified as of April 1983.

- Pharmaceuticals: Distinction between pharmaceuticals and food stuffs will be clarified. Foreign generated non-clinical test data which was not previously accepted will now be accepted.

- Agricultural products: Commitment made to take steps to approve new food additives.

Trade Initiative of October 31, 1983

No commitments were announced. The initiative refers to "steady implementation" of the revisions to the laws governing standards and certification procedures. These laws were effective August 1, 1983. Followup measures will be taken based on the amendments to the laws to ensure the transparency of standards drafting processes, promote the internationalization of standards, etc.

Trade Initiative of April 27, 1984

General provisions

- Test data from foreign testing organizations which meet certain criteria will be accepted. Clear guidelines setting forth these requirements will be drawn up and published with respect to each certification system by the end of 1984.

Specific products

- Chemicals: GLPs for the testing of new industrial chemicals are to be drawn up and published soon. GLPs for agrochemicals will be adopted by March 31, 1985.

- Pharmaceuticals: Further study will be given to acceptance of foreign clinical test data, including consultations with foreign countries on ethnic-based physiological differences, and an interim report will be issued by March 31, 1985. Examinations of approvals can start before "long term stability tests" are completed.

- Electrical appliances: Japan has joined an international certification program for electrical appliances and is promoting harmonization with international standards.

- Motor vehicles: The quantity of vehicles that can be approved under the "low volume exemption" will be increased from 300 to 500.

II. IMPLEMENTATION OF COMMITMENTS

Trade Initiative of January 10, 1982

Despite commitment of official guidance on sports equipment, U.S. metal baseball bats were not accepted until the fall of 1983. Commitments on cosmetics have been implemented. Transfer of health care products licenses has not been permitted, but foreign non-clinical test data is now accepted.

Trade Initiative of May 28, 1982

The inclusion of a commitment to permit foreign entities to participate in standards drafting activities seemed to be an earnest attempt to implement changes in traditional Japanese standards practices. The effectiveness of this commitment was undermined by the Japanese Government's failure to ensure that each affected agency issued guidance to the relevant industrial organizations. A significant number of American experts has not yet served on Japanese standards drafting committees.

Further guidance on sporting goods proved ineffective. Commitments on cosmetics were implemented; simplified registration and acceptance of foreign animal test data were implemented on March 31, 1982. The effect of clarification of toxicity test standards and the establishment of standards for drugs for material use were not precise enough to result in administrative reform. The commitment to accept foreign animal test data for pharmaceuticals was implemented on March 31, 1982.

Trade Initiative of January 13, 1983

The March 1983 recommendations included proposed revisions to 17 Japanese laws to establish the principle of non-discriminatory treatment of foreign products during approval procedures. The legislation to implement these changes was submitted to the Diet and passed in May 1983.

From March to December 1983, the Japanese Government provided notification to the GATT of 69 regulations under the Standards Code. Of these, 29 had comment periods of 9 weeks or more, 35 had comment periods of between 45 days and 9 weeks, and five had comment periods of less than 45 days.

Implementation of commitments in health care area was mixed. All non-clinical foreign test data is now accepted, but foreign clinical tests are still not accepted. Foreign clinical test data may be accepted by the spring of 1985. "Unfriendly" product approval transfers are permitted only in limited cases.

Excellent progress was made by the Ministry of Health and Welfare in resolving problems affecting the importation of cosmetics, such as publication of ingredients lists, simplified registration procedures, and acceptance of non-clinical test data.

Revision of the plywood standard was implemented. Progress was also made in the designation of new food additives. However, the promise to clarify the distinction between pharmaceuticals and health foods was not implemented. In addition, the Japanese Government did not establish a GLP for agricultural chemicals until October 1984.

Trade Initiative of April 27, 1984

The statement on acceptance of foreign generated test data was not new, but simply repeated previous Japanese Government commitments.

The commitment to adopt GLPs for industrial and agricultural chemicals also repeated previous statements by the Government of Japan. Despite a previous commitment in March 1983, the Japanese Government has moved slowly in adopting GLPs. Final GLPs for agricultural chemicals were issued in October 1984. Final GLPs for industrial chemicals will become effective in April 1985.

Despite a Japanese Government commitment to accept foreign clinical test data, no guidelines for the acceptance of such data have yet been established. As an example, the Ministry of Health and Welfare (MHW) has stated that the results of foreign clinical test data are "basically" acceptable for medical devices immune to ethnic differences. However, the MHW has repeatedly rejected U.S. requests to approve one such device based solely on foreign generated clinical test data. The MHW has retreated from its commitment by stating that its statement does not apply to "new modalities." In fact, the MHW has established no criteria for determining whether devices are immune to racial differences.

The commitment to examine applications for approval before long term stability tests are completed will benefit U.S. manufacturers by speeding up the approval process.

U.S. motor vehicle manufacturers utilize the low-volume exemption in the Japanese approval process for motor vehicles, but do not ship significant quantities to Japan. Hence, the increase in the exemption will have little impact on U.S. exporters.

III. APPLICABILITY TO U.S. INTERESTS

In the past, U.S. exporters to Japan faced numerous technical barriers imposed by various Japanese ministries. Foremost among these barriers was the Japanese Government's policy of only permitting producers or products within its territory to obtain product approvals. As a consequence of this policy, all imported products were subject to burdensome and costly dock-side inspection procedures, to determine whether or not they conformed with Japanese requirements. Other barriers faced by U.S. exporters included non-transparent procedures, lack of adequate appeal mechanisms and a prohibition against access to important standards development committees. Since 1982, the Government of Japan has attempted to address standards-related trade barriers in each of its trade liberalization initiatives.

The most significant commitments made by the Japanese Government in this area have been to:

- make arrangements for foreign participation in standards-drafting committees;

- provide for direct access to Japanese approval schemes; and

- accept foreign-generated test data.

The statutory and regulatory framework for implementing these commitments has been completed, as evidenced by, for example, the revision in May 1983 of sixteen Japanese laws to provide for "direct access." However, full implementation of these commitments at the technical level has not yet been achieved.

Factory Inspection and Product Testing

Japanese regulatory procedures describe a two-step approval process. First, a producer's factory is inspected and registered. Second, sample products are tested and approved. These steps are generally conducted by quasi-governmental bodies called "designated entities."

American and other foreign suppliers gained "direct access" to the two-step Japanese approval process as a result of revisions made to sixteen regulatory statutes in 1983. The revisions have not benefitted a significant number of American suppliers because, wary of inspections and tests conducted by officials from "designated entities," Americans fear loss of business confidential information. To resolve this problem, the U.S. Government has requested that Japanese ministries designate U.S. testing firms to conduct inspections and tests in the United States according to Japanese criteria.

Towards this goal, the Minstry of International Trade and Industry has approved two U.S. testing firms to conduct factory inspections for American suppliers. In addition, the Ministry of Health and Welfare has approved one U.S. testing firm to test food products, and the Ministry of Agriculture, Forestry and Fisheries also approved a U.S. supplier to grade and label exports.

The announcement in the April 1984 trade initiative that Japanese ministries will accept American generated test data repeats past Japanese policy pronouncements on this issue. These previous announcements have not achieved significant results. For example, three years of efforts to obtain acceptance by the Ministry of Health and Welfare of clinical test data for health care products have been unsuccessful.

The recent announcement does not contain agreement by Japanese ministries to designate U.S. and other foreign firms to conduct the product tests required in step two of the Japanese approval process. On the contrary, some Japanese ministries are asking that U.S. testing firms enter into contracts with designated entities concerning the acceptance of test data. In the past, such contracts have been characterized as "mutual arrangements" and have been based on concepts of sectoral reciprocity. The incorporation of such concepts in Japan's unilateral institution of import promotion activities is inappropriate in the context of the U.S.-Japan trade relationship.

Participation in Standards Drafting Committees

American experts have yet to benefit from a Japanese commitment in the May 1982 trade initiative to permit foreign input in standards drafting committees. The 1982 announcement set up a means for American experts to participate in the activities of "private" associations, since foreign nationals cannot directly participate in ministerial activities under Japanese law. Many "private" Japanese associations draft technical specifications that are subsequently adopted as regulations by Japanese ministries. However, only MITI admits that this relationship exists and other ministries have largely ignored this commitment.

In 1983, MITI issued a list of 250 standards activities that eventually will be approved as "Japanese Industrial Standards" (JIS). No Americans actually joined in these activities, as adequate administrative procedures were not in place to process their requests. A new list, issued by MITI in July 1984, is currently being circulated to interested American experts.

CUSTOMS PROCEDURES

I. JAPANESE MARKET OPENING COMMITMENTS

Trade Initiative of January 30, 1982

The Japanese Government announced five new measures intended to facilitate clearance of imports by Japanese Customs. The measures were:

1) an "After Permit Examination" system, under which Japanese Customs may issue import permits before final examination of all relevant import documentation;

2) abbreviated examination of documentation for goods regularly imported by the same importer from the same exporter;

3) streamlining of documentation required by Customs to complete entry;

4) exemption from repeat physical inspection for repeat shipments, when the goods in each shipment are identical and when the importer and exporter are the same; and

5) a classification center at Tokyo Customs House to centralize classification problems.

Trade Initiative of May 28, 1982

The Japanese Government announced two new measures:

1) dismantling of the requirement for an importer of certain pharmaceuticals to file an import report to the Ministry of Health and Welfare, and broadening of the exemption from import formalities for small sample quantities to cover larger sample quantities; and

2) a system allowing food importers to file required import reports with the Ministry of Health and Welfare before the arrival of perishable products.

II. IMPLEMENTATION OF COMMITMENTS

All the measures described above, except the change for pharmaceuticals, were implemented by April 1, 1982. The pharmaceuticals change was implemented on May 1, 1982.

III. APPLICABILITY TO U.S. INTERESTS

U.S. exporters have traditionally complained that Japanese customs clearance procedures are time-consuming and implemented in an inconsistent manner.

The measures included in the trade initiatives apply across-the-board to imports from all sources. U.S. producers ship large quantities of agricultural commodities which are uncontroversial and easily identifiable (such as corn and soybeans), and therefore likely to benefit from the measures designed to facilitate entry of repeat shipments. However, there have never been difficulties getting such agricultural products into Japan. The marginal effect on U.S. exports to Japan is therefore small.

The other measures generally ease Customs clearance procedures. Since Customs clearance procedures themselves do not pose significant barriers to U.S. goods, making entry procedures easier, though welcome, will not have major impact on bilateral trade flows. Nevertheless, certain exporters (pharmaceuticals, perishable products) are likely to gain direct benefits of importance to their businesses.

An outstanding U.S. concern in this area is the fact that the Customs Service holds goods on the docks in Japan until they have been cleared by other Japanese ministries, which can result in costly delays.

TOBACCO

I. JAPANESE MARKET OPENING COMMITMENTS

Trade Initiative of January 13, 1983

Tariffs on cigarettes and cigars to be reduced from 35% to 20%, with a compound tariff rate introduced for cigarettes. Tariff on pipe tobacco to be reduced from 60% to 35%. Tariff cuts to be effective as of fiscal year 1983.

Expansion of the number of retail outlets authorized to handle foreign brands to include all outlets in major cities other than Tokyo and Osaka, as of March 31, 1983. Outlets in Tokyo and Osaka to be included as of October 31, 1983. "Efforts will be made" to permit all outlets which wish to sell foreign products to do so by March 31, 1985.

Commitment to study the possibility of establishing an independent distribution network for imported tobacco products in tandem with the Japanese Government's analysis of the future of the Japan Tobacco and Salt Public Monopoly Corporation (JTS) as part of its overall efforts at administrative reform.

Trade Initiative of October 21, 1983

"The Government will actively promote improvement in the distribution systems for imported tobacco products."

Trade Initiative of April 27, 1984

Announcement that legislation has been introduced in the Diet by the Ministry of Finance to privatize JTS, end its monopoly on the importation and distribution - but not the manufacture - of tobacco products, and allow independent importation and distribution of tobacco products after registration with the Ministry of Finance. Pricing policies are to be set by manufacturers with Ministry approval. Among the conditions for approval will be that: (1) price must be uniform in all parts of Japan; (2) pricing policies do not violate Japan's Antimonopoly Laws; and (3) pricing does not constitute dumping.

The excise tax will be revised from wholly *ad valorem* to partially specific. The excise tax will now be composed of an 80% *ad valorem* component (based on the retail price), while the remaining 20% will be a specific tax.

Importers will be free to choose their own retailers. Efforts to expand number of retail outlets handling imported tobacco products will continue to be made while legislation is pending.

II. IMPLEMENTATION OF COMMITMENTS

Effective May 1, 1983, Japanese tariffs on imports of cigarettes and cigars were cut from 35% to an ad valorem equivalent of 20%, and those on pipe tobacco from 60% to 35%. However, concurrent with the tariff reduction, a tax surcharge of 20 yen per pack was imposed on cigarettes. Consequently, although the price differential between domestic and imported brands was reduced, the retail price of imports remained high.

As of March 31, 1983, the Japanese Government expanded the number of retail outlets authorized to handle foreign brands to include all outlets in major cities other than Tokyo and Osaka. According to U.S. industry sources, some 36,000 outlets were handling imported brands as of June 1983. Expansion in authorized retail outlets to Tokyo and Osaka proceeded on schedule.

Legislation to privatize the JTS was passed by the Japanese Diet on August 7, 1984. This legislation has an effective date of April 1, 1985.

III. APPLICABILITY TO U.S. INTERESTS

For many years American tobacco manufacturers have been seeking increased access to the Japanese market, which had estimated retail sales of $10 billion in 1983. To date, U.S. producers, who are highly competitive in the world market, have been unsuccessful in securing more than a two percent share of the Japanese market. This small market share has been largely the result of pricing and other controls imposed by the Japan Tobacco and Salt Public Monopoly Corporation (JTS), the government monopoly controlling tobacco sales.

A November 1980 agreement between the U.S. Government and the Government of Japan resulted in tariff reductions on manufactured tobacco products from 90% to 35%; an increase in the number of retail outlets licensed to carry imported brands from 14,000 to 20,000; and the elimination of some marketing and advertising restrictions. In the wake of the agreement, U.S. sales increased only slightly, from 1.3% to 1.4% of the Japanese market.

The January 1983 tariff reductions covered approximately $60 million in U.S. exports of manufactured tobacco products. Although smaller than desired by the U.S. industry, these represented significant cuts. The effect of the tariff cuts on the competitiveness of U.S. products was reduced by the imposition of an additional surcharge on sales of tobacco products, however.

The presence of the JTS monopoly has severely limited the competitiveness of imported tobacco products in the Japanese market. Marketing restrictions include a requirement to test market new brands under conditions laid down by JTS that are more restrictive than those covering JTS' own brands. Restrictions on advertising expenditures, though ostensibly nondiscriminatory, work in favor of established domestic brands which are already familiar to Japanese consumers and against new foreign brands attempting to achieve market recognition.

Consequently, the passage by the Japanese Diet of legislation to privatize JTS represents a potentially significant market opening measure. Once implemented, the new measures will end the Japanese Government monopoly on distribution, enable U.S. firms to set prices independently of government direction (although prices will be subject to approval by the Ministry of Finance), and continue the expansion of the number of retail outlets permitted to handle tobacco products.

The actual market opening effect of this legislation will depend very heavily on the manner in which it is implemented, however. A significant U.S. concern is that the price approval process be truly transparent, essentially automatic, and neither arbitrary nor discriminatory. The U.S. Government will be following the implementation of these measures very closely.

The revision of the excise tax on cigarettes from a wholly ad valorem tax to one with a specific tax component is also a positive step. Although U.S. exporters would prefer that the excise tax be wholly specific, in order to eliminate the "tax on tax" effect in which the impact of the tariff is compounded by the excise tax, revision of the excise tax to include a specific component should enable a reduction in the retail price of imported cigarettes.

The statement in the April package that importers will be free to choose their own retailers is a response to a long-standing U.S. request. Although such retailers will have to be chosen from those licensed to sell tobacco products, criteria for new retailers to obtain licenses appear to be reasonable.

With an independent distribution system and fair price competition, the U.S. industry has estimated that it could increase its share of the $10 billion Japanese tobacco market from its current 1.8 percent share to a share of 20 percent.

TELECOMMUNICATIONS MARKET LIBERALIZATION

I. JAPANESE MARKET OPENING COMMITMENTS

Trade Initiative of April 27, 1984

Reference was made to two bills pending in the Japanese Diet, the Telecommunications Business Bill and the Nippon Telegraph and Telephone Company Bill.

The Telecommunications Business Bill is "designed to introduce the idea of competition into the telecommunications market," which is currently dominated by Nippon Telegraph and Telephone Public Corporation (NTT), a government-owned monopoly. Under the provisions of the bill, there are to be no restrictions on foreign investment in "Class II" telecommunications enterprises. (Class II enterprises are defined in the bill as those firms that lease telecommunications lines, rather than owning their own lines.) The Japanese Government made a commitment to ensure that, once the bill is passed, registration and notification procedures for Class II businesses will be simple and transparent. Implementation of the legislation will be reviewed within three years.

The Nippon Telegraph and Telephone Company bill will transform NTT into a private company. The Japanese Government made a commitment to ensure that competition between the privatized NTT and other telecommunications firms is fair.

II. IMPLEMENTATION OF COMMITMENTS

Both telecommunications bills are still pending in the Diet. The legislation is expected to pass the Diet in December 1984, and to become effective on April 1, 1985.

III. APPLICABILITY TO U.S. INTERESTS

Until now, Japan's telecommunications services market has been closed to foreign firms due to the presence of NTT. In addition, imports have played a very small role in Japan's telecommunications equipment market, accounting for only 1.4% of consumption in 1983. Japan is the second largest national market in the world for telecommunications equipment, accounting for approximately 9% of world consumption and 11% of world production. NTT also accounts for the low level of import penetration in the telecommunications equipment market, as NTT's procurement comprises 40% of the market.

Passage of the telecommunications market liberalization bills could open up significant new opportunities in the Japanese market for U.S. exporters and investors. The real value of market liberalization, however, will depend very heavily on the manner in which implementing ordinances are framed and administered. U.S. Government officials are monitoring the progress of this legislation closely. Among the factors that will have an important effect on the ability of U.S. firms to compete in the Japanese telecommunications market are:

- Registration and notification procedures:

  Procedures which are transparent, objective, and non-discriminatory. Confidentiality for business plans submitted for registration purposes. Timely processing of applications.

- Cross-subsidization between services:

  Accounting procedures which prevent firms operating basic telecommunications services (such as NTT) from using fees from such services to subsidize rates for services in which they face foreign competition.

- Standards:

  Non-discriminatory testing procedures for certification of telecommunications equipment.

Passage of Japanese telecommunications liberalization, if implemented in a manner which permits foreign firms to compete on an equal basis in the Japanese market, could significantly expand market opportunities in two areas. First, it should expand opportunities for U.S. investors in Japan's telecommunications services market. Second, it should increase competition in Japan's telecommunications equipment market, thus creating new opportunities for U.S. telecommunications equipment producers.

NTT PROCUREMENT

I. JAPANESE MARKET OPENING COMMITMENTS

Trade Initiative of January 13, 1983

"[A]s part of the continued sincere implementation of internationally non-discriminatory and competitive procurement procedures, measures will continue to be actively taken to publicize information concerning the procedures and other aspects of procurement and to respond readily to those foreign companies wishing to participate in the NTT procurement, so as to facilitate their participation."

II. IMPLEMENTATION OF COMMITMENTS

NTT has fully implemented the technical and procedural requirements of the NTT Agreement. They have also taken a number of measures to help U.S. firms' sales efforts, such as holding seminars in Tokyo and several U.S. cities on how to sell to NTT. Sales by U.S. firms to NTT have increased from $15 million in 1981 to $140 million in 1983. However, the U.S. Government believes that U.S. firms can, and should, do considerably better.

III. APPLICABILITY TO U.S. INTERESTS

During the first three-year agreement opening NTT procurement to foreign firms, which expired in December 1983, sales by U.S. firms to NTT increased from a negligible level in 1980 to about $140 million in 1983. But despite the sharp growth, 1983 sales accounted for only 4.5 percent of total NTT procurement. Moreover, little of what NTT has purchased from American firms has been high technology equipment of the type that is central to the telecommunications network and likely to promote the development of long-term relationships with American suppliers.

Nevertheless, given the importance of being able to compete for a share of the Japanese telecommunications market, which is the second largest in the world, the U.S. Government negotiated a renewal of the Agreement in 1983. The new three-year agreement, signed on January 30, 1984 by Ambassador Brock and Foreign Minister Abe, is one that we expect will enable our highly competitive firms in this field to make inroads into sales of sophisticated, network-related equipment to NTT over both the short and long term.

The revised agreement reaffirms Japan's commitment to open NTT's sizable purchases to U.S. exporters, while strengthening that commitment in a number of ways. Among the improvements incorporated into the revised agreement are commitments by NTT to: treat U.S. and Japanese firms on an equal basis in all of NTT's R&D activities; accept bids in English at NTT's New York office; and aggregate purchases so as to make them commercially attractive to foreign suppliers. The new agreement also mandates annual reviews of NTT's performance in implementing its commitments. The key criteria that the United States will be looking for in the review are:

1) significant and increasing sales volume and value;

2) purchases of sophisticated core network equipment; and

3) purchases of equipment of the type that will lead to long-term supplier relationships.

In addition, the U.S. Government will closely monitor the implementation of pending legislation to liberalize Japan's telecommunications market. Passage of this legislation could have two effects on NTT procurement from U.S. firms. First, changes in the legal status of NTT could affect the procurement agreement. The United States will continue to consult closely with the Government of Japan to ensure that this does not occur. Second, liberalization of Japan's telecommunications market should introduce an element of competition which should create a strong incentive for NTT to purchase equipment from the most competitive sources, regardless of nationality. With competitive procurement procedures, U.S. firms should be able to improve the volume of their sales to NTT.

GOVERNMENT PROCUREMENT

I. JAPANESE MARKET OPENING COMMITMENTS

Trade Initiative of October 21, 1983

"In line with the spirit of the Agreement on Government Procurement and from the viewpoint of continuing to ensure non-discrimination between nationals and non-nationals, even further efforts will be made to put the purport of the Agreement into practice (promotion of procurement through competitive tendering procedures, facilitation of the procedures for the qualification of suppliers, etc.). The attention of local governments will be drawn to the spirit of the Agreement."

II. IMPLEMENTATION OF COMMITMENTS

We have seen no evidence of action to open the government procurement market in Japan to foreign products through increased use of competitive procurement procedures. Japanese Government agencies continue to make extensive use of non-competitive procurement procedures.

III. APPLICABILITY TO U.S. INTERESTS

The U.S. Government has been seeking an explanation from Japan on the extensive use by a number of Japanese Government agencies of the Government Procurement Code's exception for single-tendering. We are working to resolve bilateral government procurement issues within the context of the GATT Government Procurement Code.

III. PROCUREMENT

I. JAPANESE MARKET OPENING COMMITMENTS

Trade Initiative of April 27, 1984

The Government of Japan stipulated that, once telecommunications legislation passed the Diet, private firms will be able to purchase foreign-made communications satellites. In addition, a privatized NTT will be permitted to purchase foreign-made satellites, but only to the extent such purchases are "consistent with the space development policy." Similar conditions were applied to procurement of foreign satellites by other Japanese Government agencies.

II. IMPLEMENTATION OF COMMITMENTS

Implementation of the commitment to permit private firms to purchase foreign satellites is dependent upon passage of the pending legislation to liberalize Japan's telecommunications market. The vague wording of the conditions under which Japanese Government agencies will be permitted to purchase foreign satellites raises concerns regarding the practical effect which this statement will have in promoting actual purchases of foreign satellites.

III. APPLICABILITY TO U.S. INTERESTS

The "Long-Range Vision on Space Development," published in July 1983, expresses concern over Japan's past reliance on U.S. space technology, and states that, "in the future, Japan should aim at receiving orders from other countries for developing and launching satellites by means of techniques which have been accumulated by her independent technical development." Thus, Japan has identified the space industry not only as necessary in order to keep Japan in the forefront of technology, but as an important potential export industry.

In July 1984, the head of the Japanese Government agency in charge of the space development policy, the Science and Technology Agency, was quoted in the Japan Times as saying that Japan must develop its own space technology because equipment purchased from Europe and the United States is unreliable. Director-General Michiyuki Isurugi said that, by the end of the century the Japanese Government plans to send about 50 satellites into orbit, "none of which will be purchased from other nations."

MITI officials have informed the United States that Director-General Isurugi's statement does not reflect any Japanese Government consensus. However, in light of Japan's policy of self-sufficiency in satellite development, Director-General Isurugi's statement raises concerns that the April 1984 statement will not result in any improvement in market access for U.S. satellite producers.

It is for this reason that the United States is continuing to seek clarification of Japan's satellite procurement policy. Although the U.S. Government has officially requested clarification of the statement in the April 1984 trade initiative, the Japanese Government has not yet responded. The vague wording of the April policy pronouncement raises concerns that NTT and other Japanese Government agencies are committed to purchase of Japanese satellites through at least the mid-1990s.

Japan's satellite procurement policy creates two concerns for the United States. First, it denies competitive U.S. producers access to a potentially major commercial market. Second, it presents the threat of the creation of potential domestic and third country competitors behind a wall of infant industry protection, through subsidized research and development and preferential government procurement policies.

SOFTWARE PROTECTION

I. JAPANESE MARKET OPENING COMMITMENTS

Trade Initiative of April 27, 1984

The Japanese Government made a commitment not to send any proposal for new legislation affecting software protection to the current session of the Diet. However, the Japanese Government reiterated its intention to develop new modes of software protection, while "noting the need for international harmony."

II. IMPLEMENTATION OF COMMITMENTS

At present, the rights of computer software developers in Japan are adequately protected by Japanese copyright laws. A proposal to change the basis for the legal protection of software remains under consideration within the Japanese Government.

III. APPLICABILITY TO U.S. INTERESTS

Adequate protection of computer software is of profound importance to the competitive and financial positions of U.S. companies in the world information industry. The United States believes that only legislation which would base computer software protection on Japanese copyright laws, can adequately protect the rights of computer software program developers.

Legislation under consideration within the Japanese Government would establish a *sui generis* form of protection for computer software, based on patent concepts. This proposal raises issues of substantial concern to the United States.

First, the United States is firmly committed to the protection of software as a work of authorship under copyright norms. The proposed legislation would undercut the fragile international consensus on this issue, and provide the developing countries with support for proposals that would sharply curtail the rights of software program developers. The United States would probably consider any legislation to remove computer software from copyright protection a violation of Japan's international obligations under the Universal Copyright and Berne Conventions.

Second, the specifics of the proposal greatly diminish protection for software developers.

1. **Compulsory system**: The Japanese Government, upon request, would have the authority to grant a compulsory license. Licensees could then distribute programs to users at minimal expense. As a result, software developers would lose control over the distribution of their programs and be unable to recover development costs. Japanese Government assertions that developers would receive fair compensation do not assuage U.S. concerns.

2. **Reduced protection period**: Under current Japanese copyright law, the term is 50 years following the death of the copyright holder. The proposal would shorten the term of protection to two to fifteen years. U.S. copyright laws covering software extend protection for 50 to 100 years.

3. **Registration**: The proposal would require the registration of software, which would entail submission of actual programs by their developers. The United States is concerned that confidentiality would not be preserved.

The United States has made it clear to the Japanese Government that passage of a bill removing computer software from copyright protection would disrupt bilateral trade in high technology. Passage of such legislation could have the following effects:

- The United States would consider instituting the "rule of the shorter term," reducing the protection available to Japanese computer software developers in the United States.
- U.S. computer suppliers would consider curtailing the software support which they provide to Japanese customers.
- U.S. companies could cease computer software development activities in Japan.
- Imports of Japanese products embodying disputed software could be enmeshed in a web of private lawsuits.
- To the extent that such an action undermined the international consensus in support of copyright protection for computer software, Japanese and U.S. firms could find their software subject to reduced protection in developing countries.

DIRECT INVESTMENT

I. JAPANESE MARKET OPENING COMMITMENTS

Trade Initiative of October 21, 1983

This initiative included a Japanese Government commitment to undertake measures to encourage capital inflow. Specifically, the Japanese Government promised a review of the "designated company system." This system consisted of foreign ownership limitations in eleven specific Japanese industries.

This commitment was followed in November by a joint statement of Japanese Foreign Minister Takeshita and Treasury Secretary Regan, in which the Japanese Government made a commitment to submit a bill to the Diet to reform the designated company system.

Trade Initiative of April 27, 1984

This initiative included a commitment to four specific steps to promote international investment:

1) an improved system of information dissemination under the Japan External Trade Organization (JETRO) "Headquarters for Promotion of Industrial Cooperation;"

2) strengthening the Office of Trade Ombudsman (OTO) to deal with investment as well as trade complaints;

3) support for investment promotion missions; and

4) procedural improvements to further expedite the notification processing period for foreign direct investment in Japan.

In addition, the Japanese Government indicated it would introduce legislation to remove foreign ownership restrictions in value-added network telecommunications services (VANS) enterprises.

The commitments in this initiative were followed by a Ministry of Finance announcement in the May 29 "Yen-Dollar Report" of a new policy that will allow licensed foreign banks to participate in trust banking in Japan by either establishing their own trust banks or entering into joint venture with Japanese trust banks. However, partnerships with non-licensed Japanese firms (e.g., securities firms) are not permitted.

II. IMPLEMENTATION OF COMMITMENTS

On May 18, 1984 the Diet passed a bill eliminating the designated company system.

On VANS, the Japanese Government has introduced several telecommunications reform bills to the Diet which would permit foreign ownership of most VANS enterprises. The bills are expected to pass later this year. Implementing regulations for telecommunications services are expected to be in place by the spring of 1985.

JETRO has established the Headquarters for Promotion of Industrial Cooperation. This group held its first meeting on July 5, 1984, and is currently in the process of determining methods of improving information dissemination activities.

The OTO's mandate has been expanded to include investment complaints. The Japanese Government's support for investment promotion missions has traditionally been very good and is expected to continue.

Implementing regulations permitting foreign participation in trust banking are expected to be in place by the spring of 1985.

The Japanese Government has stated that the processing period under their investment notification system will not, in practice, exceed two weeks. In addition, Japanese officials have indicated that the Japanese Foreign Investment Council will meet to consider further shortening of the time period.

III. APPLICABILITY TO U.S. INTERESTS

The U.S. goal has been to facilitate greater bilateral investment flows with Japan in accord with market forces. In particular, the United States has sought to reduce government barriers to investment and to improve administrative procedures governing new and established investment.

Over the past year the Japanese have eliminated the designated company system and allowed for foreign entry into telecommunication services and trust banking as of 1985. In addition, the Japanese Government has taken steps to promote increased foreign investment in Japan, although it still maintains a two-week pre-notification system for foreign investment.

The U.S. Government believes that the following additional steps by the Japanese Government would encourage additional bilateral investment:

- issuing a joint investment policy statement with the United States at an appropriate time;
- sponsoring a private sector review of U.S. and Japanese investment climates;
- considering methods of reconciling U.S. and Japanese bilateral investment statistics; and
- further bilateral discussions focused on standards for treatment of established investors in both the United States and Japan.

Further U.S. direct investment in Japan should serve to improve U.S. exports to Japan. In addition, continued bilateral discussions, encouraging greater Japanese investment in the United States, should result in such benefits as job creation and technology transfer. The U.S. objective in these discussions is to reinforce our general commitment to foreign investment based on market forces.

LEGAL SERVICES

I. JAPANESE MARKET OPENING COMMITMENTS

Trade Initiative of April 27, 1984

The Japanese Government noted that the Japan Federation of Bar Associations (JFBA) is "making further efforts to come to a domestically and internationally appropriate solution" on the question of foreign lawyers' activities in Japan. The government made a commitment to "work to have an appropriate solution materialize as early as possible."

II. IMPLEMENTATION OF COMMITMENTS

There has been little progress since the April announcement. The Japanese Government has placed particular significance on the formation of a Special Committee on Foreign Lawyers by the JFBA, and noted that this committee was working for an appropriate solution. The Japanese Government has yet to inform us of the Committee's recommendations.

III. APPLICABILITY TO U.S. INTERESTS

American attorneys have been prohibited from giving advice on U.S. and international law to clients in Japan since 1955. Over the past thirty years, demand for U.S. legal talent in Tokyo (as evidenced by the hiring of U.S. lawyers as "legal trainees" by Japanese law firms) has grown dramatically, with the increasing internationalization of Japanese capital markets and Japanese corporations. In discussions with Japanese officials, the U.S. objective has been to make it legal for U.S. law firms to provide advice in Japan on U.S. and international law.

Japanese law and the JFBA rules on practice of law prohibit attorneys who are not members of the Japanese bar from acting as lawyers (giving any legal advice in any field of law) in Japan. The efforts of the Japanese Government on this issue have not produced changes in JFBA rules so far.

The JFBA appears to have realized that it will not be able to maintain its current, restrictive rules indefinitely. Japanese officials have informed us that negotiations are now underway within the JFBA over language for a potential amendment to the Lawyers' Law. An agreement is possible by fall. Should such an agreement be reached, the amendments could be submitted for Diet approval in the spring.

The major U.S. concern regarding the proposed changes is that they are likely to include a reciprocity clause. Such a clause would make access to the Japanese market in legal services conditional on access for Japanese lawyers to practice in some minimum number of U.S. States. Currently, only New York and Massachusetts have provisions permitting foreign lawyers to practice law on a limited basis without passing the bar examination. The Japanese would also like to obtain such provisions in the District of Columbia, Illinois and California. Japanese lawyers already have access to these states, since they are already permitted to take the bar examinations and they would become eligible to practice upon passing the exam. This option is essentially closed to any foreigner in Japan. Admission to the Japanese bar is contingent upon admission to the Legal Research Institute, which admits only the four hundred or so applicants with the highest scores on its admission examination out of the thousands who take the test each year. Foreign applicants, obviously, have virtually no reasonable expectation of being admitted to the bar under such a system. In light of these facts, the United States does not consider a reciprocity provision appropriate.

ENERGY

I. JAPANESE MARKET OPENING COMMITMENTS

Trade Initiative of April 27, 1984

In the April 1984 package, the Japanese undertook to follow up on the Reagan-Nakasone Joint Statement on Energy Cooperation, issued in November 1983. Specifically, the Japanese promised to send a private sector coal mission to the U.S. and to encourage feasibility studies on energy resource development, a more limited agenda than that set forth in the Joint Statement.

Implementation:

The private coal mission visited Washington in May but was discouraging regarding early opportunities for increased coal exports to Japan. The discussions, however, resulted in the establishment of a private Standing Technical Committee (STC) to explore ways to implement the Joint Statement. This committee met in Tokyo for the first time in September. The Japanese were no more encouraging than in May, but the talks will continue. On a positive note, Japanese and U.S. companies have recently announced plans for prefeasibility studies on the possible development of Alaskan coal and North Slope natural gas to export to Japan.

Applicability to U.S. Interests:

We hope these discussions and studies, primarily a result of the Reagan-Nakasone Joint Statement, will lead to expanded U.S. energy exports to Japan. While the prospects are not favorable in the short term, it is important to continue this process for the medium and long term.

The November 1983 Joint Statement gives the governments of both countries a clear framework in which to encourage their respective private sectors to find ways to increase energy trade. It calls on the private sectors of both countries to explore joint development of U.S. energy resources and possible steps to increase use of secure U.S. fuels as a substitute for less secure oil imports. We created forums where governments and private businesses can talk frankly, and the talks have been frank, especially on coal. U.S.-Japan coal trade has stagnated and the U.S. remains the swing coal supplier to Japan. This problem will require sustained high-level attention by both governments. Still, however, without the Joint Statement and the U.S.-Japan Energy Working Group, U.S.-Japan coal trade might well have declined even more severely than has been the case. We have kept U.S. coal and gas in Japan's energy picture and given U.S. suppliers a better chance to compete for a larger piece of the Japanese energy market in the years ahead.

IMPORT PROMOTION MEASURES

I. JAPANESE MARKET OPENING COMMITMENTS

Trade Initiative of January 30, 1982

The Japanese Government announced the establishment of an Office of Trade Ombudsman (OTO), with a mandate to respond to foreign complaints of inadequate access to the Japanese market. Commitment made that there would be no delays and that action would be forthcoming.

Trade Initiative of May 28, 1982

While continuing to use the OTO to respond to foreign complaints, the Japanese Government will explore ways to improve it.

The Committee for Manufactured Goods Import Measures will investigate specific problems which arise from the distribution system and business practices and take steps to correct them where possible.

Japan will continue to implement the foreign currency lending scheme for emergency imports aimed at promoting imports of "important" goods to ease trade frictions.

Under the Commerce Promotion System to be established, such organizations as JETRO and the Japan Trade Council will maintain a roster of private business consultants to whom foreign exporters can be referred, as necessary, for advice on exporting to Japan.

Trade Initiative of January 13, 1983

To strengthen the role of OTO in resolving foreign trade complaints, a high-level Advisory Council will be established to give it more political clout, filing of proxy complaints will be permitted, and procedures for processing complaints will be improved.

Further efforts to expand imports of manufactures will be made in the light of information developed by the Committee for Manufactured Goods Import Measures, including foreign comments about shortfalls in the Japanese distribution system and its business practices.

Greater use of the business consultant service system will be made to resolve trade differences.

The Japanese Government will lend its support to the Import Promotion Council of the Japan Foreign Trade Council in its efforts to encourage private sector initiatives to promote increased imports.

Trade Initiative of October 21, 1983

Further efforts will be made to enhance the effectiveness of OTO in removing barriers to selling in Japan.

Low interest financing of manufactured imports will become available from the Japan Export-Import Bank and other steps to facilitate import financing will be considered as needed.

Information about the Japanese distribution system will be publicized, and efforts made to improve the system for imports.

The Japanese Government will designate an import promotion month, send import promotion missions abroad, and encourage import promotion efforts by exporters.

Trade Initiative of April 27, 1984

To promote imports of manufactures, the Japanese Government will implement programs which assist in penetrating the Japanese market for specific foreign manufactured goods, and support the staging of exhibits for these products.

II. IMPLEMENTATION OF COMMITMENTS

Office of Trade Ombudsman: The effect of subsequent procedural changes in increasing the effectiveness of OTO has been questionable, since changes have not changed OTO's status; OTO still functions as a clearing-house, and not as a true ombudsman, that is, with the authority to resolve problems by overruling decisions made within individual ministries. In 1984, the mandate of the OTO was expanded to cover investment issues.

Manufactured Imports Promotion Committee: The Committee has not been given a broad mandate to consider private sector trade barriers, e.g., buy national attitudes, as envisioned in the May 1982 initiative.

System of Business Consultants: The system has been implemented, in accordance with the commitment in the May 1983 initiative. The consultants are based in Japanese trading company offices in New York, Chicago, Houston, Los Angeles and San Francisco. However, JETRO has declined to provide the names of these consultants to U.S. Government officials, stating that JETRO wished to pre-screen the U.S. companies seeking the consultants' services.

Import Promotion Missions: The Japanese Government has conducted a number of seminars and trade missions in the United States. Over the past year, these have included: a JETRO-sponsored medical import promotion visit to Los Angeles, Houston, Chicago and New York; a JETRO-sponsored U.S. States Trade Fair in Tokyo; a seminar on U.S.-Japan trade problems in New York; a U.S.-Japan trade seminar in Birmingham, Alabama; and a Trade Week seminar in San Francisco.

III. APPLICABILITY TO U.S. INTERESTS

The recommendation for the creation of an Office of Trade Ombudsman was originally included in a 1981 Japan-U.S. Economic Relations Group Report. The report recommended that this office not be attached to any single government ministry, but have the authority to intervene in the administrative processes of all ministries dealing with trade and investment issues and to review policy decisions having trade significance made by domestically-oriented ministries.

While OTO has been a valuable tool in tracing trade problems to their roots, it is basically a clearing-house, receiving complaints and channeling them to the relevant ministries, and then reporting the results of the ministries' investigation to the complainant. OTO's impact could be improved if it could exert pressure on the ministries to revise their regulations and practices to facilitate imports. Moreover it does not provide an effective mechanism for appealing rulings that do not provide relief to the complainant. The U.S. would like to see OTO function as an active problem solving entity with an effective system for appealing adverse rulings.

The system of business consultants was established at Japanese Government initiative, rather than in response to a U.S. request. As such, it exceeds U.S. objectives and expectations.

Japanese Government sponsored trade missions, studies of the Japanese distribution system, and high-level statements encouraging the purchase of goods manufactured abroad, while welcome, are difficult to evaluate as effective market opening measures, because they have never been accompanied by any yardsticks with which to evaluate their success.

APPENDIX:

JAPANESE "COMPREHENSIVE ECONOMIC MEASURES"

The Japanese Government has announced five broad sets of market liberalizing measures over the past four years. These measures were meant to fulfill Japan's commitment to a market open to international trade.

Trade Initiative of December 16, 1981 and January 10, 1982

The first trade initiative, announced in December 1981, accelerated the timing of tariff cuts agreed to in the Multilateral Tariff Negotiations, and established a Japanese Government committee to study opportunities for imports in the Japanese market. One of the results of this group's work was the announcement in January 1982 of a list of measures which would be implemented to alleviate non-tariff barriers in the standards and customs areas. In January, the Japanese Government also announced the establishment of an Office of Trade Ombudsman, which would be charged with responding to foreign complaints regarding barriers to market entry.

Trade Initiative of May 28, 1982

The second trade initiative included tariff eliminations or reductions on a wide variety of products, among which those on photographic film, cut diamonds and several others were of interest to the United States. It also contained a commitment by the Japanese Government to undertake a series of "generic" remedies in such areas as customs procedures, and foreign access to participation in the formulation of industry standards.

Trade Initiative of December 25, 1982 and January 13, 1983

The third trade initiative was announced by the Government of Japan in December 1982 and January 1983. In December, tariff reductions were announced on chocolate, tobacco products and paper. In January, the Japanese Government announced a commitment to undertake a high-level review of Japanese standards and certification procedures. This review eventually led to the passage of some sixteen laws which, as they are implemented at the administrative level, could represent the most significant and wide-ranging removal of foreign barriers to the Japanese market since the conclusion of the Multilateral Trade Negotiations in 1979.

Also included in the January announcement were commitments to expand the number of retail outlets permitted to distribute foreign cigarettes, undertake a study of the possible liberalization of Japan's distribution system for tobacco products, and ensure the participation of foreign firms in NTT procurement.

Trade Initiative of October 21, 1983

The fourth trade initiative included tariff reductions on 44 items. Also included was a one-year acceleration of rates committed to in the Multilateral Trade Negotiations on some 1200 items.

The October announcement also promised "steady implementation" of improvements in Japanese standards and certification procedures, further efforts to promote procurement by Japanese Government agencies from foreign firms, and a review of the "designated company" system, which limited foreign investment in eleven Japanese industries.

Trade Initiative of April 27, 1984

This initiative included cuts on sixty-five tariff classifications covering wine, paper products, color photo paper, black-and-white film, hay balers and a wide range of agricultural products. Also included was a commitment to eliminate or liberalize quotas on thirteen agricultural categories.

The statement referred to pending legislation to liberalize the Japanese tobacco and telecommunications markets. Statements in the initiative also promised improvements in standards and certification procedures. Other commitments included in the April initiative were an expansion of the mandate of the Office of Trade Ombudsman to cover investment restrictions, and Japanese Government efforts to resolve legal services issues. Also included in the April announcement were a policy statement covering procurement by Japanese Government agencies and NTT of foreign satellites, and a commitment to postpone the introduction into the on-going Diet of a proposal to remove computer software from copyright protection.

THE SECRETARY OF COMMERCE
Washington, D.C. 20230

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Subcommittee on
Oversight and Investigations

Honorable John D. Dingell
Chairman, Subcommittee on Oversight
and Investigations
Committee on Energy and Commerce
House of Representatives
Washington, D.C. 20515

Dear John,

Thank you for your letter regarding the Department's import monitoring activities, the Japanese Government's consideration of possible informal automobile export restraint options, and the status of our continuing trade discussions with Japan.

I have attached information which responds to the additional questions you raise. I hope that this information will assist you and members of the Subcommittee in your consideration of these important issues.

Sincerely,

Mac
Secretary of Commerce

Enclosure

Question 1: Please explain in some detail how the Commerce Department and other Federal agencies have monitored on a monthly basis shipments of cars, vans, station wagons, trucks and other vehicles to the United States since the beginning of the VRA, including vehicles entering through Guam, the Virgin Islands, and Puerto Rico. To what extent does your Department know what percentage of these vehicles (or the number thereof) are shipped from specific firms (such as Toyota, Nissan, or Honda)? How reliable are the data?

Answer: The Department of Commerce began monitoring imports of automobiles in mid-1981, following the Japanese Government's announcement of the VRA. Because of differences in the U.S. and Japanese definitions of a passenger automobile, the Department's monitoring system was designed to record both imports of passenger cars and imports of station wagons, passenger vans, and utility vehicles. The latter group of products enter the United States under TSUS item 692.1005, "utility vehicles in country of origin." Imports of both categories of products are recorded by month of export from Japan to allow for direct comparisons with Japanese export data compiled by the Japan Automobile Manufacturers Association. These data serve as the official basis for the Japanese restraint.

The Department also monitors imports of passenger cars and of station wagons, passenger vans, and utility vehicles which enter U.S. customs territory through Puerto Rico. Such imports also are recorded by month of export from Japan. Transshipments of vehicles to the United States from Puerto Rico are reported in Commerce publication EM 594. All vehicles transshipped to the United States from Puerto Rico were counted initially under the Puerto Rican restraint. Such transshipments are monitored periodically by the Department.

The Japanese automobile export restraint does not include vehicles shipped to Guam, the Virgin Islands or other U.S. Trust Territories, many of which have been transshipped to the United States in recent years. Data developed by the U.S. Bureau of the Census for the purposes of import monitoring include shipments of Japanese-origin vehicles that enter the United States as transshipments from these areas. Monthly information on such transshipments can be derived from Census data which is submitted to the International Trade Administration for use in monthly press releases.

The Japanese automobile export restraint does not cover shipments of trucks, a small number of utility vehicles designed for cargo handling (e.g., Isuzu Trooper II), or cargo vans. Imports of such vehicles enter the United States as automobile trucks and pay a 25 percent ad valorem tariff. They are not monitored formally although the Department's staff periodically examines trade and sales data on these vehicle categories.

The Department of Commerce does not compile any information on the number of vehicles shipped to the United States by individual Japanese manufacturers, or on the percentage of total shipments attributable to specific firms.

We believe that the information on imports of Japanese vehicles provided to the Bureau of the Census by the U.S. Customs Service, and in turn to the International Trade Administration, is sufficiently reliable to permit effective monitoring of U.S. imports of Japanese vehicles and Japanese export levels.

Question 2: In reply to question 3 of our letter, your Department provided a table of cars and "other vehicles" shipped each year to the United States by Japan. For 1984, the table was only for a part of the year. Please update the table. Also, please explain what types of vehicles are included in the term "other vehicles" for 1983 and 1984 and indicate what portion thereof were not subject to the VRA.

Answer:

Table I

U.S.-Japanese Motor Vehicle Trade, 1970-1984
(thousands of units)

	U.S. Imports from Japan			U.S. Exports to Japan		
Year	Cars	Other Vehicles	Total	Cars	Other Vehiles a/	Total
1970	381	27	408	5	-	5
1971	704	84	788	5	-	5
1972	698	160	858	5	-	5
1973	625	160	785	11	-	12
1974	792	242	1,034	14	-	14
1975	696	142	838	15	-	15
1976	1,129	258	1,387	14	-	14
1977	1,342	230	1,572	14	-	14
1978	1,563	369	1,932	13	-	13
1979	1,617	398	2,015	15	-	15
1980	1,992	482	2,474	7	-	7
1981	1,912	471	2,383	4	-	4
1982	1,801	367	2,168	3	-	3
1983	1,871	424	2,295	3	-	3
1984	1,949	573	2,522	2	-	2

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a/ Volume less than 1,000 units annually.

The category "other vehicles" includes light trucks (pickups, cargo vans, and a small number of utility vehicles designed for carrying cargo), medium and heavy trucks and cab chassis, motor buses, and a small volume of special purpose motor vehicles (fire trucks, mobile cranes and other items classified under TSUS 692.1400 and 692.1600). None of these vehicles are covered by the Japanese automobile export restraint.

Figures on imports of "other vehicles" have been revised to exclude items entering the United States under TSUS 692.1090, "Other motor vehicles," a category which largely consists of all-terrain recreational and other off-road vehicles. Annual U.S. imports of such vehicles from Japan grew from about 1,000 units in 1970 to 43,000 units in 1977, and then to about 550,000 units in 1984.

Question 3: In order that the Subcommittee will continue to understand the impact of non-extension of the VRA and the impact of Japanese imports on trade, please provide the Subcommittee with monthly reports of cars and other vehicles shipped to the United States from Japan. The first report should cover January and February 1985. Please indicate when the next report and each one thereafter can be expected.

Answer: In January 1985, the United States imported 176,051 passenger cars, including station wagons, passenger vans, and utility vehicles, from Japan. This represents a 5.4 percent increase over the January 1984 level of 167,047 units (see attached Table I). The United States also imported 65,506 light, medium and heavy trucks from Japan in January 1985, up 50.7 percent from 43,460 during the same month of 1984 (see attached Table II). The United States did not import any motor buses (Table III) or special purpose motor vehicles (Table IV) from Japan during January 1984 or January 1985. Data on U.S. motor vehicle imports during February 1985 are not yet available.

The Department will submit its next report on monthly imports of motor vehicles from Japan to the Subcommittee by the end of April 1985. This report will contain data for February 1985. Subsequent monthly reports will be forwarded to the Subcommittee by the end of each month.

Question 4: The February 23, 1985 edition of the Washington Post states that the Japanese Ministry of International Trade and Industry "is now studying the full range of options." One option reportedly is called "weather forecasting" whereby the Japanese Government "would set a target for exports and then use a variety of informal pressures to make companies conform." How would this option differ from the VRA? Would this arrangement or any informal arrangement be consistent with U.S. antitrust laws?

Answer: On March 27, the Government of Japan announced that it would limit automobile exports to the United States to 2.3 million units during the year beginning April 1, 1985, a 24 percent increase over the current restraint level. The Administration has warned Japan that extension of the restraint at any level is not a substitute for actions to open its own market to U.S. products.

Question 5: Please identify the various trade matters now being negotiated with Japan and indicate the status of each such negotiation. What are the problems with Japan's new trade rules regarding telecommunications?

Answer

We have numerous trade issues currently under negotiation with Japan. The most important are the sectoral discussions on telecommunications, forest products, electronics and medical/pharmaceutical products. Because the new telecommunications laws in Japan became effective on April 1, 1985, we have been engaged in intensive negotiations over the last 10 weeks on telecommunications services and equipment issues. As of April 1, these discussions on telecommunications issues still were underway. Our negotiating goals are to minimize the discretionary authority of the Japanese bureaucrats; limit telecommunications equipment standards only to those necessary to prevent "harm to the network"; remove discriminatory practices between foreign and domestic suppliers; and assure the transparency, integrity and independence of procedures for standards approval, equipment certification and appeals.

The telecommunications talks are making some progress but significant problems remain to be resolved, hopefully within the next few days. The electronics and medical sector discussions are only beginning.

Other negotiations concern service industry problems, fisheries, tobacco market liberalization and civil air questions. We have made little progress on services issues; good progress on fisheries and tobacco problems. The civil aviation talks are ongoing and focus on the possible entry of Nippon Cargo Airlines (NCA) to serve the U.S. market.

Question 6: According to Under Secretary Lionel H. Olmer, the Administration is studying retaliatory measures toward Japan in various areas. Are those limited to telecommunications? If yes, please explain why? Please describe such measures, their advantages and disadvantages, and the problems of each. When will the study be completed?

Answer: No decision has been made regarding this issue. The Administration is currently examining the expanded use of Section 301 as well as other new authorities granted to the President in the Tariff and Trade Act of 1984 as possible sources of leverage to insure that U.S. companies have fair access to foreign markets, including those in Japan. I recognize your concerns on this matter, but the Administration is still in the process of reviewing options.

Question 7a: Please provide a table of imports (in dollars) of "manufactures" (with totals) from Lesser Developed Countries (LDCs) to the U.S., Japan, Canada, and the European Countries (EC) for the years 1976 to the present, together with a table showing the share of total industrial country imports of "manufactures" from LDCs (in percent) for the same countries and for the same period. Please also show tables of Japanese "manufactures" (Export and Import and Surplus) with the U.S., EC, Canada, and Industrialized countries (in dollars and percentage). Please provide an analysis of the trend shown for each table.

Answer:

Industrial Country Manufactures Imports from Less Developed Countries - Discussion of Table 1 and Table 2 (Attached)

The United States was the source of almost two-thirds of the 1976-83 growth and 89 percent of the 1982-83 growth in major industrial country manufactures imports from Less Developed Countries (LDCs). Total imports of manufactures by leading industrialized countries from LDCs were up $10.6 billion in 1983 over the $72.7 billion reported in 1982. Since 1976 these industrial countries have more than doubled their manufactured imports from LDCs going from $30.7 billion in 1976 to $83.3 billion in 1983.

The earlier and stronger economic recovery in the United States combined with the rise in the value of the dollar from its 1979 low explain a large part of the higher growth in U.S. manufactures imports from LDCs. Since many of the LDCs tie their currencies to the dollar, the price competitiveness of their exports in countries other than the United States is hurt by dollar appreciation. This has been true despite devaluations by some of the LDCs, since these devaluations have not been enough to compensate for these countries' high inflation rates.

Until 1980, growth in the European Community's (EC-10) imports of LDC manufactured products was higher than that of the United States, almost tripling between 1976 and 1980. However, the dollar value of EC-10 imports averaged roughly $3 billion per year less than those of the United States. Japan and the United States more than doubled their manufactures imports from LDCs during the 1976-80 period, while Canada's imports were up 60 percent.

Only the United States and Canada imported more manufactured products from LDCs in 1983 than they had in 1980. Japan's imports peaked in 1981, fell to $7.9 billion in 1982, and remained at $7.9 billion in 1983. EC-10 imports fell almost $5 billion from their peak of $29.8 billion in 1980 to $23.9 billion in 1982. EC-10 imports of $24.3 billion in 1983 roughly equaled their 1979 value.

The U.S. 58 percent share of 1983 major industrial country imports of LDC manufactures was at a 1976-83 high after reaching a low in 1980 of 45 percent. The EC-10 share peaked in 1980 at 42 percent and reached a low of 30 percent of major industrial country manufactures imports from LDCs in 1983. Japan's share fell to a low of 10 percent in 1983 from its 1976-83 high in 1979. The Canadian share fell from 4 percent in 1976 to 2.5 percent in 1980 before strengthening to almost 4 percent in 1983.

Japan's Manufactures Trade with the EC-10, Canada and the United States - Discussion of Tables 3A-3C (Attached)

Japan's imports of manufactures from other major industrial countries average less than one-third of its manufactures exports to them. For the United States and Canada the average is even lower at less than one-fourth and about one-tenth, respectively. Japan is an exporter of manufactures and an importer of crude materials and fuels. In 1983 manufactured products represented almost 97 percent of Japan's total exports to the world and only about one-quarter of its total imports.

The United States accounted for two-thirds of Japan's 1983 manufactures exports to the European Community, Canada and the United States combined. The United States was also the major source of Japan's imports of manufactures from these countries in 1983. Since 1976 the U.S. share of Japan's manufactures exports has averaged over 60 percent, while the EC-10 share has been in the 30 percent range.

The growth in the U.S. share of Japan's exports of manufactures since 1980 is the result of the 1983 recovery in the U.S. economy and the strengthening of the dollar relative to the Yen and European currencies since 1980. The weak dollar of 1979 and early 1980 strengthened the U.S. share of Japanese imports of manufactures. Ironically, the strengthening of the dollar against the European currencies since 1980 mathematically deflates the dollar denominated exports of the European countries and, thus, artificially inflated the 1982 and 1983 U.S. share of Japanese imports.

Japan's 1983 surplus with the United States of $30.3 billion was over two-thirds of its total manufactures trade surplus with the industrial countries. Italy is the only major industrial country that Japan has had a deficit with since 1976, at least in part because of the Italian controls on automotive imports.

Question 7b: The March 6, 1985 edition of the Washington Post (p. D-3) states that there is a "growing impatience" in Europe "over Japan's swelling trade surplus with the rest of the world," and that Japan does not "contribute to global economic growth" through imports. Do you agree with these comments? Please explain. What steps need to be taken, hopefully in concert with the Japanese, to help change Japan's ways in this regard? What will be the consequences of Japan not changing or doing so too slowly?

Answer: The concern over Japan's closed market and increasing trade surpluses is not new. All of Japan's major trading partners, including the EC and member states, have voiced concern over this situation at one time or another. The EC has initiated a general case under GATT Article 23 against Japan's trade regime and has had several trade discussions with Japan to agree on Japanese restraint on sensitive exports to the EC.

I agree that Japan's import levels, especially of manufactured products, is far too low. This does not contribute to maximization of world trade and economic growth. As you know, our open market for both developed and developing country products has been a key factor in the growing recovery of the world economy. Japan should do its share.

Opening the Japanese market is the main goal of our trade discussions with Japan. Delay or inaction by Japan will only exacerbate protectionist pressures here and elsewhere.

Question 8: In the analysis provided by your Department, Commerce states that the "total U.S. inventory of Japanese cars averaged a strong 42-day supply during the April 1981-March 1982 period, a more moderate 32-day supply in April 1982-March 1983, and only a 19-day supply in April-November 1984." The analysis adds that "most Japanese car dealers probably would hold a 40/45-day inventory." What are the latest inventory figures? If the Japanese lift the VRA as suggested by the Administration, what level of shipments to the U.S. would be required to regain the normal inventory and how long would it take, assuming that the shipment level under the VRA was insufficient?

Answer: As of February 28, 1985, 143,870 Japanese cars, representing a 21 days supply at the February 1985 selling rate, were in dealers' inventories in this country. In its analysis of the Japanese automobile export restraint, the Department estimated that 2.275 million Japanese cars could be sold in the United States in 1985. Assuming there are 310 selling days per year, this level of sales implies a daily selling rate of 7,338 cars. Based on this higher selling rate, the February 28, 1985 Japanese inventory level would amount to a 20-day supply of automobiles. To reach a 40-day inventory level, the Japanese would need to ship an additional 147,000 cars (7,338 daily sales x 20 additional selling days). For a 45-day inventory level, an additional 183,000 cars would be needed.

It is impossible to estimate how rapidly this inventory build-up could be accomplished, since it depends on many variables including the availability of vehicle transport ships and the ability of individual importer distribution systems to handle the additional volume. However, it is reasonable to assume that a 147,000 to 183,000 unit build-up in inventory could be accomplished within the first year following expiration of the present Japanese export restraint.

Attachment to Question 3

TABLE I
U.S. GENERAL IMPORTS OF PASSENGER CARS
FROM MAJOR SUPPLYING COUNTRIES
TO ALL U.S. DISTRICTS
APRIL 1983 - JANUARY 1985

(DATE OF IMPORT BASIS) (DATE OF IMPORT BASIS)

PASSENGER CARS
GROUPS A AND B **

COUNTRY	PREV. FYTD QUANTITY	CUR. FYTD QUANTITY	% OF TOTAL	UNIT VALUE	JAN PRIOR YR QUANTITY	CUR. MONTH QUANTITY	% OF TOTAL	UNIT VALUE
JAPAN	1,565,192	1,669,984	55.2	6,744	167,047	176,051	48.7	6,789
CANADA	721,221	889,517	29.4	9,434	83,542	82,467	22.8	9,402
WEST GERMANY	246,241	280,605	09.3	13,899	49,246	61,159	16.9	11,733
ITALY	5.199	7,295	00.2	15,433	373	892	00.2	13,529
FRANCE	27,790	48,950	01.6	5,942	2,238	21,130	05.8	2,523
UNITED KINGD	13,757	15,963	00.5	24,904	1,378	1,509	00.4	26,880
* E.E.C.	298,061	360,150	11.9	13,284	54,481	85,406	23.6	9,748
SWEDEN	90,093	93,372	03.1	11,318	11,405	16,768	04.6	11,923
OTHER	2,080	14,829	00.5	2,352	105	760	00.2	6,440
TOTAL	2,676,647	3,027,852	100.0	8,432	316.580	361,452	100.0	8,322

COUNTRY	PREV. FYTD VALUE	CUR. FYTD VALUE	% OF TOTAL	UNIT VALUE	JAN PRIOR YR VALUE	CUR. MONTH VALUE	% OF TOTAL	UNIT VALUE
JAPAN	9,758,752,239	11,262,307,722	44.1	6,744	0	1,195,161,274	39.7	6,789
CANADA	6,308,098,880	8,391,775,875	32.9	9.434	0	775,373,237	25.8	9,402
WEST GERMANY	3,350,180,522	3,900,138,400	15.3	13,899	0	717,590,240	23.9	11,733
ITALY	71,797,372	112,583,537	00.4	15,433	0	12,067,640	00.4	13,529
FRANCE	230,917,839	290,842,459	01.1	5,942	0	53,311,140	01.8	2,523
UNITED KINGD	338,158,004	397,535,087	01.6	24,904	0	40,562,206	01.3	26,880
* E.E.C.	4,042,245,608	4,784,121,459	18.7	13,284	0	832,542,834	27.7	9,748
SWEDEN	945,831,814	1,056,756,842	04.1	11,318	0	199,926,316	06.6	11,923
OTHER	13,491,930	34,880,069	00.1	2,352	0	4,894,626	00.2	6,440
TOTAL	21,068,420,471	25,529,841,967	100.0	8,432	0	3,007,898,287	100.0	8,322

* E.E.C. INCLUDES UNITED KINGDOM ,FRANCE, WEST GERMANY, ITALY, NETHERLANDS, BELGIUM AND LUXEMBOURG, DENMARK, IRELAND, AND GREECE

** INCLUDES TSUSA #'S 692.1005, 692.1010, 692.1015, 692.1030, 692.1035, 692.1110, 692.1115,692.1130, 692.1135

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TABLE II
U.S. GENERAL IMPORTS OF TRUCKS
FROM MAJOR SUPPLYING COUNTRIES
TO ALL U.S. DISTRICTS
APRIL 1983 - JANUARY 1985

(DATE OF IMPORT BASIS) (DATE OF IMPORT BASIS)

TRUCKS
GROUP E **

COUNTRY	PREV. FYTD QUANTITY	CUR. FYTD QUANTITY	% OF TOTAL	UNIT VALUE	JAN PRIOR YR QUANTITY	CUR. MONTH QUANTITY	% OF TOTAL	UNIT VALUE
JAPAN	381,539	517,994	59.0	4,560	43,460	65,506	65.0	4,578
CANADA	297,774	350,525	39.9	8,677	33,359	33,107	32.9	8,784
WEST GERMANY	8	16	00.0	12,980	1	4	00.0	20,030
ITALY	0	1	00.0	18,339	0	0	00.0	-
FRANCE	3	1	00.0	5,094	0	0	00.0	-
UNITED KINGD	53	42	00.0	14,717	1	0	00.0	-
* E.E.C.	166	70	00.0	19,050	12	4	00.0	20,030
SWEDEN	0	0	00.0	-	0	0	00.0	-
OTHER	393	9,175	01.0	6,984	1	2,118	02.1	7,344
TOTAL	679,872	877,764	100.0	6,231	76,832	100,735	100.0	6,019

COUNTRY	PREV. FYTD VALUE	CUR. FYTD VALUE	% OF TOTAL	UNIT VALUE	JAN PRIOR YR VALUE	CUR. MONTH VALUE	% OF TOTAL	UNIT VALUE
JAPAN	1,720,466,148	2,362,106,574	43.2	4,560	0	299,899,792	49.5	4,578
CANADA	2,479,843,558	3,041,449,851	55.6	8,677	0	290,823,754	48.0	8,784
WEST GERMANY	82,369	207,687	00.0	12,980	0	80,119	00.0	20,030
ITALY	0	18,339	00.0	18,339	0	0	00.0	-
FRANCE	23,631	5,094	00.0	5,094	0	0	00.0	-
UNITED KINGD	644,364	618,105	00.0	14,717	0	0	00.0	-
* E.E.C.	3,123,265	1,333,534	00.0	19,050	0	80,119	00.0	20,030
SWEDEN	0	0	00.0	-	0	0	00.0	-
OTHER	1,977,998	64,052,086	01.2	6,984	0	15,554,461	02.6	7,344
TOTAL	4,205,410,969	5,468,972,045	100.0	6,231	0	606,358,126	100.0	6,019

* E.E.C. INCLUDES UNITED KINGDOM ,FRANCE, WEST GERMANY, ITALY, NETHERLANDS, BELGIUM AND LUXEMBOURG, DENMARK, IRELAND, AND GREECE

** INCLUDES TSUSA #'S 692.0210, 692.0220, 692.0230, 692.0310, 692.0320, 692.0330, 692.0350

TABLE III
U.S. GENERAL IMPORTS OF BUSES
FROM MAJOR SUPPLYING COUNTRIES
TO ALL U.S. DISTRICTS
APRIL 1983 - JANUARY 1985

(DATE OF IMPORT BASIS) (DATE OF IMPORT BASIS)

BUSES
GROUP F **

COUNTRY	PREV. FYTD QUANTITY	CUR. FYTD QUANTITY	% OF TOTAL	UNIT VALUE	JAN PRIOR YR QUANTITY	CUR. MONTH QUANTITY	% OF TOTAL	UNIT VALUE
JAPAN	0	0	00.0	-	0	0	00.0	-
CANADA	14,427	17,533	98.9	15,035	1,502	1,847	98.9	13,838
WEST GERMANY	28	130	00.7	130,229	1	20	01.1	107,775
ITALY	0	0	00.0	-	0	0	00.0	-
FRANCE	0	1	00.0	99,910	0	0	00.0	-
UNITED KINGD	24	12	00.1	13,073	4	0	00.0	-
* E.E.C.	68	157	00.9	121,925	10	20	01.1	107,775
SWEDEN	1	1	00.0	97,567	0	0	00.0	-
OTHER	32	34	00.2	79,384	0	1	00.1	23,601
TOTAL	14,528	17,725	100.0	16,109	1,512	1,868	100.0	14,849

COUNTRY	PREV. FYTD VALUE	CUR. FYTD VALUE	% OF TOTAL	UNIT VALUE	JAN PRIOR YR VALUE	CUR. MONTH VALUE	% OF TOTAL	UNIT VALUE
JAPAN	0	0	00.0	-	0	0	00.0	-
CANADA	226,454,164	263,600,478	92.3	15,035	0	25,559,292	92.1	13,838
WEST GERMANY	1,980,733	16,929,742	05.9	130,229	0	2,155,507	07.8	107,775
ITALY	0	0	00.0	-	0	0	00.0	-
FRANCE	0	99,910	00.0	99,910	0	0	00.0	-
UNITED KINGD	169,985	156,881	00.1	13,073	0	0	00.0	-
* E.E.C.	3,211,391	19,142,200	06.7	121,925	0	2,155,507	07.8	107,775
SWEDEN	139,076	97,567	00.0	97,567	0	0	00.0	-
OTHER	3,899,712	2,699,043	00.9	79,384	0	23,601	00.1	23,601
TOTAL	233,704,343	285,539,288	100.0	16,109	0	27,738,400	100.0	14,849

* E.E.C. INCLUDES UNITED KINGDOM ,FRANCE, WEST GERMANY, ITALY, NETHERLANDS, BELGIUM AND LUXEMBOURG, DENMARK, IRELAND, AND GREECE

** INCLUDES TSUSA #'S 692.0420, 692.0440, 692.0720, 692.0740

TABLE IV
U.S. GENERAL IMPORTS OF OTHER VEHICLES
FROM MAJOR SUPPLYING COUNTRIES
TO ALL U.S. DISTRICTS
APRIL 1983 - JANUARY 1985

OTHER VEHICLES
GROUP G **

	(DATE OF IMPORT BASIS)				(DATE OF IMPORT BASIS)			
COUNTRY	PREV. FYTD QUANTITY	CUR. FYTD(1) QUANTITY	% OF TOTAL	UNIT VALUE	JAN PRIOR YR QUANTITY	CUR. MONTH QUANTITY	% OF TOTAL	UNIT VALUE
JAPAN	1	0	00.0	N/A	0	0	00.0	N/A
CANADA	26	46	79.3	N/A	1	5	83.3	N/A
WEST GERMANY	91	6	10.3	N/A	2	0	00.0	N/A
ITALY	9	1	01.7	N/A	0	0	00.0	N/A
FRANCE	2	0	00.0	N/A	0	0	00.0	N/A
UNITED KINGD	5	1	01.7	N/A	2	1	16.7	N/A
* E.E.C.	107	10	17.2	N/A	4	1	16.7	N/A
SWEDEN	2	2	03.4	N/A	0	0	00.0	N/A
OTHER	6	0	00.0	N/A	0	0	00.0	N/A
TOTAL	142	58	100.0	N/A	5	6	100.0	N/A

COUNTRY	PREV. FYTD VALUE	CUR. FYTD VALUE	% OF TOTAL	UNIT VALUE	JAN PRIOR YR VALUE	CUR. MONTH VALUE	% OF TOTAL	UNIT VALUE
JAPAN	542,731	68,467	00.2	N/A	0	0	00.0	N/A
CANADA	17,054,486	23,179,274	65.9	N/A	0	2,061,455	59.3	N/A
WEST GERMANY	8,134,592	3,128,944	08.9	N/A	0	630,216	18.1	N/A
ITALY	112,792	144,374	00.4	N/A	0	0	00.0	N/A
FRANCE	452,512	0	00.0	N/A	0	0	00.0	N/A
UNITED KINGD	617,730	1,660,921	04.7	N/A	0	769,857	22.2	N/A
* E.E.C.	9,675,811	6,121,143	17.4	N/A	0	1,400,073	40.3	N/A
SWEDEN	280,999	364,916	01.0	N/A	0	0	00.0	N/A
OTHER	4,298,484	5,433,473	15.5	N/A	0	13,724	00.4	N/A
TOTAL	31,852,511	35,167,273	100.0	N/A	0	3,475,252	100.0	N/A

* E.E.C. INCLUDES UNITED KINGDOM ,FRANCE, WEST GERMANY, ITALY, NETHERLANDS, BELGIUM AND LUXEMBOURG, DENMARK, IRELAND, AND GREECE

** INCLUDES TSUSA #'S 692.1400, 692.1610, 692.1630

(1) EXCLUDES TSUSA #'S FOR WHICH QUANTITIES ARE NOT REPORTED
N/A-- UNIT VALUE NOT APPLICABLE BECAUSE OF TSUSA #--SEE NOTE (1)

Attachment to Question 7A

NOTES ON THE DATA

The data in the following tables are originally from United Nations Series D Trade Tapes. This data is reported to the United Nations by the individual countries and translated to the Standard International Trade Classification Revision 1 by the U.N. Exports are reported on either a free along side (F.A.S.) or a free on board ship (F.O.B.) basis, depending on the reporting country (Japan reports F.O.B., while the U.S. reports F.A.S.). Imports are reported on a cost insurance and freight (C.I.F.) basis for all countries.

The "Industrial" country group used in the following tables and in the previous analysis includes: the European Community (EC-10), Canada, Japan, and the United States.

The coverage in the tables is for the years 1976 through 1983. Data for 1984 are not yet available at sufficient level of detail, if at all, for virtually all of the reporting countries requested.

Table 1
IMPORTS OF MANUFACTURES FROM LESS DEVELOPED COUNTRIES
SELECTED COUNTRIES
(In Billions of U.S. Dollars)

Reporting Country	1976	1977	1978	1979	1980	1981	1982	1983
Industrial	30.7	36.0	48.3	61.9	71.4	73.1	72.7	83.3
Belgium/Luxembourg	1.1	1.4	1.7	2.0	2.3	2.0	2.0	1.9
Canada	1.2	1.2	1.3	1.8	1.8	2.4	2.3	3.0
Denmark	0.3	0.3	0.3	0.4	0.5	0.4	0.4	0.4
France	1.6	1.9	2.1	3.4	4.7	4.1	3.9	3.7
Germany	3.7	4.4	5.4	7.2	8.9	7.3	6.9	7.0
Greece	0.1	0.1	0.1	0.2	0.3	0.4	0.1	0.2
Ireland	0.1	0.1	0.1	0.2	0.2	0.2	0.2	0.2
Italy	1.1	1.4	1.6	2.6	3.4	2.7	2.8	2.7
Japan	3.6	3.8	5.3	7.7	7.8	8.2	7.9	7.9
Netherlands	0.9	1.2	1.6	1.8	2.1	1.8	1.6	1.8
United Kingdom	2.9	3.2	4.6	6.4	7.5	6.2	5.9	6.3
United States	14.1	17.0	24.2	28.2	32.0	37.5	38.7	48.1
European Community (EC-10)	11.8	14.0	17.5	24.2	29.8	25.0	23.9	24.3

Table 2
SELECTED COUNTRIES SHARE OF TOTAL INDUSTRIAL COUNTRY IMPORTS
OF MANUFACTURES FROM LESS DEVELOPED COUNTRIES
(Percentage Shares)

Reporting Country	1976	1977	1978	1979	1980	1981	1982	1983
Belgium/Luxembourg	3.6%	3.8%	3.4%	3.3%	3.2%	2.7%	2.8%	2.3%
Canada	4.0%	3.3%	2.7%	2.8%	2.5%	3.2%	3.1%	3.6%
Denmark	0.8%	0.9%	0.6%	0.7%	0.6%	0.5%	0.5%	0.5%
France	5.1%	5.4%	4.4%	5.5%	6.5%	5.6%	5.4%	4.5%
Germany	12.2%	12.2%	11.2%	11.7%	12.5%	10.0%	9.4%	8.4%
Greece	0.3%	0.3%	0.3%	0.3%	0.4%	0.5%	0.2%	0.2%
Ireland	0.2%	0.3%	0.3%	0.3%	0.3%	0.3%	0.3%	0.3%
Italy	3.6%	3.8%	3.3%	4.1%	4.8%	3.7%	3.9%	3.3%
Japan	11.8%	10.6%	11.0%	12.5%	10.9%	11.2%	10.8%	9.5%
Netherlands	3.0%	3.2%	3.2%	2.9%	2.9%	2.4%	2.2%	2.2%
United Kingdom	9.4%	9.0%	9.5%	10.4%	10.5%	8.5%	8.1%	7.6%
United States	45.9%	47.3%	50.0%	45.5%	44.9%	51.4%	53.2%	57.8%
European Community (EC-10)	38.3%	38.8%	36.2%	39.2%	41.7%	34.2%	32.9%	29.2%

Table 3A
JAPAN'S MANUFACTURES IMPORTS FROM SELECTED COUNTRIES
(In Billions of U.S. Dollars)

Year	Industrial	Belgium and Luxembourg	Canada	Denmark	France	Germany
1976	7.6	0.1	0.2	0.1	0.4	1.1
1977	8.4	0.2	0.2	0.1	0.5	1.4
1978	11.5	0.3	0.4	0.4	0.6	1.8
1979	15.0	0.3	0.5	0.1	0.9	2.3
1980	17.5	0.3	0.8	0.2	1.1	2.3
1981	18.2	0.3	0.7	0.1	0.9	2.2
1982	17.8	0.3	0.7	0.1	1.0	2.1
1983	19.2	0.3	0.8	0.2	1.1	2.2

Year	Greece	Ireland	Italy	Netherlands	United Kingdom	United States	European Countries (EC10)
1976	.0	.0	0.4	0.2	0.6	4.5	2.9
1977	.0	.0	0.4	0.2	0.7	4.7	3.5
1978	.0	.0	0.6	0.2	1.0	6.0	5.0
1979	.0	.0	0.9	0.3	1.1	8.5	6.0
1980	.0	.0	0.9	0.2	1.4	10.7	6.4
1981	.0	0.1	0.8	0.3	1.4	11.3	6.2
1982	.0	0.1	0.9	0.2	1.1	11.3	5.8
1983	.0	0.2	0.9	0.3	1.1	12.1	6.3

Table 3A2
SELECTED COUNTRIES SHARES OF JAPAN'S MANUFACTURES IMPORTS FROM INDUSTRIAL COUNTRIES
(Percentage Shares)

Year	Industrial	Belgium and Luxembourg	Canada	Denmark	France	Germany
1976	NA	1.0%	2.6%	0.8%	5.0%	14.7%
1977	NA	1.9%	3.0%	0.9%	5.6%	16.2%
1978	NA	2.3%	3.6%	3.0%	5.4%	16.1%
1979	NA	2.1%	3.0%	0.8%	5.9%	15.6%
1980	NA	1.7%	4.2%	0.9%	6.0%	13.1%
1981	NA	1.5%	3.7%	0.8%	5.2%	12.2%
1982	NA	1.5%	4.2%	0.7%	5.6%	12.0%
1983	NA	1.6%	3.9%	1.2%	5.7%	11.5%

Year	Greece	Ireland	Italy	Netherlands	United Kingdom	United States	European Countries (EC10)
1976	0.2%	0.4%	4.6%	.4%	7.8%	59.0%	38.4%
1977	0.1%	0.3%	5.2%	2.5%	8.0%	55.6%	41.5%
1978	0.1%	0.3%	5.4%	1.9%	8.3%	52.0%	43.7%
1979	0.2%	0.3%	5.8%	1.9%	7.6%	56.9%	40.1%
1980	.0%	0.3%	4.9%	1.3%	7.9%	59.7%	36.0%
1981	0.1%	0.4%	4.4%	1.5%	8.0%	62.3%	34.0%
1982	.0%	0.8%	5.0%	1.2%	6.0%	63.1%	32.7%
1983	.0%	0.8%	4.7%	1.4%	5.9%	63.2%	32.9%

Table 3B
JAPAN'S MANUFACTURES EXPORTS TO SELECTED COUNTRIES
(In Billions of U.S. Dollars)

Year	Industrial	Belgium and Luxembourg	Canada	Denmark	France	Germany
1976	24.5	0.7	1.5	0.2	0.9	2.2
1977	30.6	0.8	1.6	0.3	1.0	2.7
1978	38.0	0.9	1.8	0.8	1.1	3.6
1979	40.6	1.0	1.7	0.3	1.4	4.1
1980	45.8	1.4	2.4	0.4	2.0	5.6
1981	60.6	1.4	3.3	0.6	2.2	5.9
1982	55.2	1.1	2.8	0.4	2.3	4.9
1983	64.0	1.3	3.6	0.6	2.0	5.8

Year	Greece	Ireland	Italy	Netherlands	United Kingdom	United States	European Countries(EC10)
1976	0.7	0.1	0.5	1.0	1.3	15.3	7.6
1977	1.1	0.1	0.4	1.2	1.9	19.4	9.5
1978	0.9	0.2	0.5	1.5	2.3	24.6	11.6
1979	0.8	0.2	0.6	1.5	3.0	26.0	12.9
1980	0.5	0.2	0.9	1.9	3.6	31.0	16.5
1981	0.8	0.2	0.9	1.8	4.7	38.2	18.5
1982	0.6	0.2	0.8	1.6	4.5	35.9	16.5
1983	0.9	0.2	0.9	1.6	4.8	42.4	18.0

Table 3B2
SELECTED COUNTRIES SHARES OF JAPAN'S MANUFACTURES EXPORTS TO INDUSTRIAL COUNTRIES
(Percentage Shares)

Year	Industrial	Belgium and Luxembourg	Canada	Denmark	France	Germany
1976	NA	2.7%	6.1%	0.9%	3.8%	8.0%
1977	NA	2.6%	5.4%	1.0%	3.2%	8.8%
1978	NA	2.4%	4.8%	2.0%	2.8%	9.4%
1979	NA	2.6%	4.1%	0.7%	3.3%	10.2%
1980	NA	2.8%	4.8%	0.8%	3.9%	11.2%
1981	NA	2.4%	5.6%	0.9%	3.6%	9.8%
1982	NA	2.1%	5.1%	0.8%	4.1%	8.9%
1983	NA	2.0%	5.6%	0.9%	3.1%	9.0%

Year	Greece	Ireland	Italy	Netherlands	United Kingdom	United States	European Countries(EC10)
1976	3.0%	0.3%	2.0%	4.2%	5.4%	62.7%	31.2%
1977	3.6%	0.4%	1.3%	4.0%	6.2%	63.5%	31.1%
1978	2.3%	0.3%	1.2%	3.9%	6.0%	64.7%	30.5%
1979	1.9%	0.5%	1.5%	3.8%	7.4%	64.1%	31.8%
1980	1.1%	0.4%	1.8%	3.9%	7.1%	62.1%	33.1%
1981	1.4%	0.4%	1.5%	3.0%	7.8%	63.6%	30.8%
1982	1.1%	0.4%	1.5%	2.9%	8.2%	65.0%	29.9%
1983	1.4%	0.3%	1.3%	2.6%	7.5%	66.3%	28.2%

Table 3C
JAPAN'S BALANCES IN MANUFACTURES TRADE WITH SELECTED COUNTRIES
(In Billions of U.S. Dollars)

Year	Industrial	Belgium and Luxembourg	Canada	Denmark	France	Germany
1976	16.9	0.5	1.3	0.2	0.5	1.0
1977	22.2	0.6	1.4	0.2	0.5	1.3
1978	26.5	0.7	1.4	0.3	0.4	1.7
1979	25.6	0.7	1.2	0.2	0.5	1.8
1980	32.0	1.1	1.6	0.3	0.9	3.3
1981	41.8	1.1	2.7	0.4	1.2	3.6
1982	37.3	0.9	2.1	0.3	1.3	2.8
1983	44.8	1.0	2.8	0.3	0.9	3.6

Year	Greece	Ireland	Italy	Netherlands	United Kingdom	United States	European Countries(EC10)
1976	0.7	0.1	0.1	0.8	0.7	10.8	4.7
1977	1.1	0.1	.0	1.0	1.1	14.8	6.0
1978	0.9	0.2	-0.2	1.2	1.3	18.5	6.6
1979	0.7	0.2	-0.3	1.2	1.9	17.5	6.9
1980	0.5	0.2	.0	1.7	2.2	20.3	10.1
1981	0.8	0.2	0.1	1.5	3.2	26.9	12.3
1982	0.6	0.1	-0.1	1.4	3.5	24.6	10.7
1983	0.9	.0	-0.1	1.4	3.7	30.3	11.7

Congress of the United States
House of Representatives
Committee on Energy and Commerce
Room 2125, Rayburn House Office Building
Washington, D.C. 20515

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

February 8, 1985

Honorable Lee M. Thomas
Administrator
Environmental Protection Agency
Waterside Mall -- West Tower
401 M Street, S. W.
Washington, D. C. 20460

Dear Mr. Thomas:

On January 26, 1982, the United States Court of Appeals for the Sixth Circuit issued an Order in the consolidated cases of *General Motors Corporation* and *Ford Motor Company* v. *Douglas Costle, Administrator, Environmental Protection Agency*, (Nos. 80-3271, 8072, and 80-3655). The Subcommittee is concerned about the long delay at your agency in complying with this Order and the actual and potential effects of that delay.

The cases arise under title V of the Motor Vehicle Information Cost Savings Act which established the motor vehicle fuel economy program administered by the Department of Transportation (DOT) through the National Highway Traffic Safety Administration (NHTSA). As you know, the program was enacted in December 1975, as part of the Energy Policy and Conservation Act. That legislation originated in the former Energy and Power Subcommittee of the then House Committee on Interstate and Foreign Commerce. At that time, I was Chairman of that Subcommittee and the House Floor Manager of the legislation. Congressman Philip R. Sharp, who was a Member of the Subcommittee, was the principal author of this program.

As you also know, the Environmental Protection Agency's (EPA) principal role under the law relates to section 503(d) which is concerned with the test procedures used to measure compliance with the statutory and DOT standards. The court, in issuing its 1982 Order, explained the purpose of the test procedures as follows:

> Under 15 U.S.C.A. subsection 2003(d)(1) Congress requires that compliance with the fuel economy standards should be measured by the yardstick of the 1975 model year procedures. The purpose of this testing is to establish the manufacturer's corporate average fuel economy for a given year.
>
> All parties recognize that Congress gave EPA wide latitude in modifying the 1975 procedures to improve the accuracy of tests provided that any modified tests produce results comparable to the 1975 test procedures. (Underlining supplied.)

The court then commented on EPA's actions under section 503(d) and issued its order:

> The EPA has made certain changes in the relevant procedures. Now both Ford and General Motors seek adjustments so that current testing is comparable to the 1975 test procedures. They contend that the EPA made the proposed adjustments without complying with the Administrative Procedure Act, 5 U.S.C.A. subsection 551, et seq. (1978) as 15 U.S.C.A. subsection 2004 (1980 Supp.) dictates it must.
>
> We deem it appropriate to remand this case to the EPA so that it may initiate a proper rulemaking proceeding concerning procedures for establishing an adjustment factor for current tests to determine the corporate average fuel economy of manufactured vehicles covered by this statute. (Underlining supplied.)

I understand that EPA did not begin to comply with this Order until December 1983, even though petitions were filed with EPA by Ford, in April 1982, and by GM, in October 1982, to establish Corporate Average Fuel Economy (CAFE) adjustment factors. The petitions stated that the effect of the Court's order was to overrule decisions made by EPA in 1980 denying those firms' 1979 requests for such "adjustments."

On December 21, 1983, EPA issued, pursuant to the Order, a "Notice of Proposed Rulemaking" (NPRM) "proposing that CAFE adjustments be made to compensate for test changes made in the past, as well as proposing procedures which the Agency will follow in providing notice and opportunity for public participation in making any future test changes or CAFE adjustments" (48 F.R. 58526). In issuing the NPRM, EPA no longer denied that adjustments are required, but stressed that the Court Order "did not direct EPA to develop specific adjustment factors to be applied to any manufacturers' CAFE, nor did it direct EPA to apply the manufacturer's estimated adjustment factors."

Without commenting on the merits of the 1983 EPA proposal, including EPA's interpretation of the Court's Order which the Subcommittee is examining, along with other matters, with the help of the General Accounting Office, the Subcommittee notes that EPA has yet to take any final action on the proposed rule which is now more than 13 months old. Instead, on December 7, 1984, EPA issued a Supplemental Notice of Proposed Rulemaking (SNPRM) to apply an "additional industry-wide CAFE adjustment" to account for the effects of changes in the properties of the test fuel used for gasoline-powered engines. EPA noted on December 7 that it "did not consider the CAFE impact" of these tests in the prior NPRM (49 F.R. 48024). EPA then said:

> To the extent that any change to the 1975 test procedures would reduce the fuel economy of an average vehicle fleet, CAFE stringency would be increased. Since EPA is not authorized to change CAFE stringency through test procedure changes, manufacturers are entitled to a CAFE adjustment if any test procedure change can be determined to have had such an effect. (Underlining supplied.)

The supplemental notice triggered a new comment period which ended last month.

This issue of the need for EPA rules regarding this problem of tests and for making adjustments was discussed at a March 13, 1979 hearing by the Energy and Power Subcommittee (Hearing entitled "Motor Vehicle Fuel Efficiency" Serial 96-34). The matter was raised by the Ranking Minority Member of the Subcommittee, Congressman Clarence J. Brown (who is now a Commerce Department official), in a colloquy with Ms. Joan Claybrook, the then Administrator of NHTSA, and Mr. David G. Hawkins, the then EPA Assistant Air Administrator, as follows:

> MR. BROWN. I would like to return to the question of fuel economy standards and their test procedures.
>
> * * *
>
> There has been, I know in my district, a considerable complaint by many customers that the federally endorsed statement by the automobile manufacturer as to what a

car will get in terms of miles per gallon frequently is not the experience of the driver when he takes the car out on the open road. He is not getting the mileage the EPA sticker has promised him.

That problem has been dealt with, I understand, but it has caused another problem in the process. Now, the automobile manufacturers are being penalized -- the 1975 statute demands a certain mileage but the testing procedures impose additional burdens for compliance. Can you address this point? What options are available to the Government and to the industry to rectify on-the-road mileage tests while allowing compliance with the statute -- which was not drafted with these new tests in mind?

MS. CLAYBROOK. The 1975 statute requires that the EPA tests that were in effect for 1975 or comparable procedures be used to determine the fuel economy of the vehicles that comply with the statute.

There was a significant differential which appeared in a widespread way in 1977, and EPA has moved to adjust the procedure so that some of the loopholes that existed cannot be used to get a better fuel economy on the dynamometer test than you get on the highway.

* * *

MR. BROWN. What was the impact on automobile compliance with the standards after the changes in the test procedures?

MS. CLAYBROOK. Do you mean the fuel economy penalty?

MR. BROWN. Yes; what was the penalty? What did it cost in terms of compliance with the stationary and regulatory standards?

MS. CLAYBROOK. We do not know the specific answer to that. EPA, ourselves and the manufacturers are right now trying to make an assessment of that.

* * *

MR. BROWN. Can you tell me about the new standards, then. How were they set? Was it set by rule? In other words, was there a hearing on it, or was the

> determination made solely within the internal operation of the EPA?
>
> * * *
>
> MR. HAWKINS. We made these changes in accordance with the historical practice that we have had with the industry of an informal advice by way of draft circulars soliciting comments on those draft circulars by the industry and then publishing those in a final advisory form.
>
> We did not publish the number of these changes in the Federal Register for formal comment. We found that this informal process elicits comments from all of the interested members of the industry . . .

The Subcommittee Members, including myself, noted at the hearing that this EPA process was not a public process, nor did it provide a real opportunity for anyone to challenge the changes or evaluate the impacts. They urged that EPA use rulemaking in regard to these changes and expressed doubt about EPA distinctions over what is a "minor" or "major" change. They were also concerned that EPA was unable to measure the economic impact of the changes.

Since those 1979 hearings, EPA and the manufacturers have obviously learned that such changes can have a "fuel economic penalty" that is very significant. Thus, the Court Order and full compliance with it is important. EPA is moving to the regulation approach, albeit after a Court Order, but EPA is moving far too slowly.

In this regard, I understand that on May 8, 1984, the Ford Motor Company submitted to NHTSA (pursuant to section 502(d) of the Motor Vehicle Act) a plan for earning passenger automobile fuel economy credits in model year 1986. According to NHTSA's letter of July 31, 1984 to Ford, that plan was approved "in part." In doing so, NHTSA said:

> Insofar as the plan relies on the granting of a fuel economy adjustment of 0.2 miles per gallon due to test procedure changes, based on a December 21, 1983, Environmental Protection Agency notice of proposed rulemaking, the plan is denied. This adjustment is too speculative to be included in Ford's credit earning plan at this time. However, once the EPA rulemaking is completed, Ford may submit a revised plan reflecting

> any adjustment promulgated by EPA to account for test procedure changes. (Underlining supplied.)

While such a resubmittal, according to NHTSA, is possible for model year 1986, I note that the beginning of that model year is fast approaching. Presumably, Ford needs to know its adjustment at EPA is fixed, resubmit it to NHTSA for credit, and obtain that credit from NHTSA. That took over two months before. Also, it is not clear at what point such a submittal might be too late for earlier model years, such as model year 1984, by any foreign or domestic firm.

Again without commenting on the appropriateness, adequacy and effectiveness of the NPRM or SPRM, I request that you explain why it has taken more than two years to comply with the Court Order and when EPA expects to be in full compliance with that Order. Please also explain to what extent EPA has consulted with NHTSA regarding this matter and its impact and timing in regard to the provisions of section 503(1) of the Act. I request your reply by February 28, 1985.

Sincerely,

John D. Dingell
Chairman
Subcommittee on
Oversight and Investigations

cc: Honorable Diane K. Steed
Administrator
National Highway Traffic Safety Administration

Honorable Charles A. Bowsher
Comptroller General
General Accounting Office

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON D.C. 20460

MAR 1 1985

RECEIVED
THE ADMINISTRATOR
MAR 1 1985
Subcommittee on
Oversight and Investigations

Honorable John D. Dingell
Chairman, Subcommittee On Oversight And Investigations
Committee On Energy And Commerce
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

In response to your letter of February 8, 1985, I have reviewed the current status and history of the Corporate Average Fuel Economy Adjustment rulemaking. The final rules are in their last stages of development and will shortly enter the formal Agency review and concurrence process. We anticipate no unusual questions or issues will arise during this review and expect publication in May 1985.

Concerning the history of these rules, the Agency in response to the 1982 court order, initiated a very thorough and detailed review of all test procedures, policies, and rule changes which we believed might have affected the stringency of manufacturers' Corporate Average Fuel Economy (CAFE), and thus warrant an adjustment to the calculated CAFE under the provisions of the Energy Policy and Conservation Act. As part of this effort, we solicited and received input from automotive manufacturers. Due to the significance of potentially large economic penalties, we wanted to make sure that all appropriate adjustments were identified and that all manufacturers were fairly treated so as not to provide any competitive disadvantage.

The many potential issues were distilled into a set of proposed adjustments which were published on December 21, 1983. As noted in that publication, the comment period was scheduled to close February 21, 1984. However, shortly before that date, General Motors Corporation requested an extension of 60 days in the comment period. Since we make every effort to give interested parties full and adequate opportunity to comment to our proposed rules, the General Motors' request was granted and the comment period extended through April 20, 1984. Many manufacturers provided useful and thoughtful comments. There was, however, an unusually high divergence in manufacturers' information and recommendations. Also, a few of the manufacturers identified several issues not considered in the NPRM and requested additional CAFE credit. Review of these divergent views and new requests proved a lengthy process to assure fair and appropriate treatment of all manufacturers consistent with the requirements of the Energy Policy and Conservation Act.

In August 1984, General Motors requested additional CAFE credit in compensation for shifts in the properties of test fuels used by EPA and the industry over the last few years. General Motors had only discovered this shift and its potential impact on fuel economy shortly before their request. The full extent of this fuel issue and the appropriate CAFE adjustment had to be subsequently developed. Before proceeding, we asked the manufacturers whether they wanted us to include credits for the test fuel in the final rule knowing that this would delay its publication, or whether they preferred us to start a separate rulemaking on this issue. All wanted the fuel credits included and were willing to accept the delay. Our review of this issue culminated in the publication of a Supplemental Notice of Proposed Rulemaking on December 7, 1984. Also included in that notice was additional CAFE credit for fuel efficient oils as requested by General Motors and Ford and supported by new information they supplied in response to the original NPRM. The comment period to the supplemental notice closed January 22, 1985. The Agency then began the task of consolidating the two proposals and sets of comments into one final rule which we anticipate will be published this May.

We have on a number of occasions discussed this action with the National Highway Traffic Safety Administration (NHTSA). In developing the initial rules, we provided NHTSA a detailed description of our plans including anticipated credits and affected model years. Subsequently, EPA staff members have discussed specific issues with their counterparts at NHTSA. Frequent discussions between EPA and NHTSA over the timing of this rule have also taken place. We are confident that the responsible persons at NHTSA have been and are aware of the issues we are considering, the model years affected, and the promulgation schedule we are working toward. We will continue to work with NHTSA as we finalize the rulemaking.

I hope this information adequately responds to your request. I assure you we will make every effort to keep this rulemaking on schedule to allow promulgation this May.

Sincerely,

Lee M. Thomas

NINETY-NINTH CONGRESS

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THOMAS M. RYAN, CHIEF COUNSEL

U.S. House of Representatives
Committee on Energy and Commerce
Room 2125, Rayburn House Office Building
Washington, DC 20515

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

April 4, 1985

Honorable Lee M. Thomas
Administrator
Environmental Protection Agency
Waterside Mall -- West Tower
401 M Street, S. W.
Washington, D. C. 20460

Dear Mr. Thomas:

Thank you for your March 1, 1985 reply to my February 8, 1985 letter concerning the status of your Corporate Average Fuel Economy Adjustment rulemaking which includes your expectation that the rule will be finalized "in May 1985." That is helpful, although I believe that this process, despite your explanation, has taken far too long. If a further delay is anticipated, please advise the Subcommittee of the delay and the reasons for it.

Enclosed for your information is a March 27, 1985 letter from the Department of Transportation (DOT) which states that the National Highway Traffic Safety Administration (NHTSA) "will not" levy civil penalties against Jaguar which, according to the DOT, is the only company DOT knows of that "likely will" face penalties "until the test procedure adjustment issue is resolved and the magnitude of any penalties is determined." Thus, the importance of EPA acting in a timely fashion is obviously evident. Because of the time it has taken EPA to resolve this matter (which should never have occurred in the first place), enforcement is also being delayed.

In regard to the rulemaking, please explain why EPA has apparently choosen to make the adjustment on an industry basis, rather than on a company specific basis. Will this result in some firms losing credits that they might otherwise receive if it was on a company-by-company basis? Will some gain credits for which they may not be entitled? What is the justification for this approach?

I request your reply to the above matters by April 30, 1985. Please provide a copy to the General Accounting Office.

Sincerely,

John D. Dingell

JOHN D. DINGELL
Chairman
Subcommittee on
Oversight and Investigations

Enclosure (1)

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

MAR 27 1985

RECEIVED
MAR 28 1985
Subcommittee on
Oversight and Investigations

The Honorable John D. Dingell
Chairman, Subcommittee on Oversight
and Investigations
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter to Diane Steed regarding the Japanese Voluntary Restraint Agreement (VRA) and the anticipated effect on the U.S. automobile industry after the agreement expires.

I have enclosed individual responses to each of the ten questions you submitted, as well as supporting data. In accordance with your request, a copy of this response is being forwarded to the General Accounting Office.

Thank you again for your active interest in this matter.

With best wishes.

Sincerely,

Elizabeth

Elizabeth Hanford Dole

Enclosure

Question 1: The Commerce analysis states that Commerce "did not specifically assess the effect of unrestrained Japanese car exports on the U.S. companies'" ability to meet the CAFE or to use the carryback credits. Indeed, that is appropriate because your agency is better equipped to make that assessment. I request such an assessment, taking into account the above findings of the Commerce Department. Please also indicate to what extent your agency has examined or considered this issue in regard to any petitions regarding the CAFE and carryback credits. Do you agree that the impact of increased Japanese exports in the next several years (even after 1987) is important? Did NHTSA participate in the Commerce analysis? Did you review it?

Answer: Although the Department of Transportation did not participate in the Commerce Department analysis, given our statutory authority with regard to Corporate Average Fuel Economy (CAFE) we have reviewed the Commerce report. While the Japanese manufacturers may have the capacity to produce and market 1.7 million additional cars in the U.S., our review leads us to conclude that a loss of U.S. company sales of 1.1 million, as suggested by the Commerce study, is a high estimate.

However, sales losses of the size we anticipate in small car categories clearly will affect U.S. industry CAFE levels. We are currently unable to predict whether or not the impact will be of sufficient magnitude to jeopardize the domestic industry's ability to meet the current standard and avoid civil penalties even taking carry- forward and carry-back credits into account. Ⓧ

Petitions to lower the fuel economy standard for passenger cars for model year 1986 and thereafter were received from Ford and General Motors on March 1, 1985. An earlier petition from the Center for Auto Safety asked that we increase the standard for model years 1987-1990. The projected impacts of removing the VRA will be among the factors considered as we respond to these petitions.

Question 2: The Commerce Department analysis also states that "Administrative mechanisms are available to reduce the existing 27.5 mpg standard." Please ascertain for the Subcommittee what mechanisms Commerce had in mind. Please also explain what mechanisms are available, the time required to implement them, their expected affect on the problem, and what actions you have taken or plan to take to utilize them. What is the lead time required by the companies, if the mechanisms are to be effective?

Answer: Section 502(a)(4) of the Motor Vehicle Information and Cost Savings Act provides some administrative discretion to amend the current 27.5 mpg standard to a level determined to be the "maximum feasible average fuel economy level." Section 502(c) of the Act requires that, in setting such a standard, the Secretary must consider (1) technological feasibility; (2) economic practicability; (3) the effect of the federal motor vehicle standards on fuel economy; and (4) the need of the Nation to conserve energy. This action can be initiated either by the Department or in response to a petition for rulemaking. Departmental actions to reduce the existing standard for any model year must be completed prior to the start of that model year. Any action to increase the standard for any model year must be completed at least 18 months prior to the start of that model year.

With regard to the time required to take such action, as one example, the recent rulemaking to lower the MY 1985 light truck standard was completed approximately 11 months after Ford submitted its petition. A rulemaking to amend the passenger car standards could take more or less time, depending on the issues involved and the amount and complexity of required analysis. On

March 1, 1985, we were petitioned by Ford and General Motors to lower the existing 27.5 mpg standard for passenger cars to 26.0 mpg for 1986 and subsequent model years. We will promptly initiate our analyses of these petitions, as well as data submitted in response to NHTSA's December 10, 1984 notice requesting post-1985 fuel economy data, to determine whether the standards should be amended. Lead time issues will be addressed in the analyses and the Department will respond in a timely manner.

Question 3: Commerce states that the "best way to resolve the problem appears to be legislative," but it is "full of difficulties." Do you agree it is the "best way"? What legislative changes would be required and when? If the VRA is lifted, when would your agency have to recommend legislation to ensure a resolution of the "problem" and when would Congress have to act? Are you planning such legislation?

Answer: The Department has received separate petitions both to raise and lower the existing 27.5 mpg passenger car fuel economy standards. Our analyses of those petitions will be used to determine what actions, if any, the Department should take with respect to CAFE standards. At this point, we have no plans to submit any legislative changes regarding fuel economy standards.

Question 4: In the 97th Congress, NHTSA recommended some changes in the law regarding CAFE. When you testified in 1983 before the Subcommittee on Energy Conservation and Power, you said, "we are considering whether to resubmit them." Do you plan to do so? If so, when?

Answer: The Department has no plans, at this time, to propose any revisions to the CAFE statute.

As you know, we proposed three CAFE bills during the 97th Congress, the most significant of which dealt with CAFE standards for light trucks. In the absence of statutory change, the Department revised the MY 1986 light truck standards through rulemaking action, and we will soon issue standards for MY 1987.

Question 5: In 1983, you said that you "anticipate that the manufacturers will have sufficient credits to offset any shortfalls." Is that still your view, especially if there is no VRA after March 31?

Answer: We have not determined what effect, if any, expiration of the VRA will have on manufacturers' ability to comply with CAFE standards or to avoid penalties, with or without the use of carry-forward or carry-back credits. We plan to evaluate this issue as part of the Department's review of the post-1985 passenger car fuel economy petitions. We plan to ask manufacturers specifically to provide data to us regarding the effects of the expiration of the VRA.

__Question 6__: Enclosed also is a copy of my letter to the Environmental Protection Agency (EPA) concerning their rulemaking. To what extent did EPA consult NHTSA about this rulemaking, its timing, and its impact? The enclosed letter quotes from your May 8, 1984 (sic - the actual date is July 31) letter to the Ford Motor Company and states that Ford may submit a revised plan after EPA finishes the rulemaking. Is it critical that EPA act by a certain date, or will NHTSA recognize the EPA rule, in regard to Ford, whenever it is finalized?

__Answer__: On a number of occasions, EPA staff members discussed both the timing and the content of the test procedure adjustment petitions with NHTSA staff members. As part of this process, EPA provided NHTSA with a detailed description of the petitions and informally asked NHTSA for data to assist in its analysis. We have refrained from levying any civil penalties for prior years' noncompliance until EPA has responded to the petitions and provided NHTSA with revised CAFE values for affected manufacturers. For example, Jaguar fell below the model year 1983 standard and had insufficient credits to offset the shortfall. We have notified the company that we will not levy civil penalties until the test procedure adjustment issue is resolved and the magnitude of any penalties is determined. This same policy would apply to Ford or any other auto manufacturer, which might face civil penalties prior to completion of EPA's rulemaking. In addition, NHTSA will make all appropriate adjustments to the manufacturers' CAFE credit balances once the EPA rulemaking is completed.

Question 7: A May 3, 1983 memorandum for the Presidential Task Force on Regulatory Relief entitled "Automobile Fuel Economy Standards" noted that as to some domestic firms, the "only way they can avoid penalties...is to increase the relative prices of larger models substantially in order to discourage demand." It added that the "general prospect is for reduced consumer choice, higher prices, and a new round of regulatory burdens on the automobile industry."

The Commerce analysis states that "transaction prices of new U.S. compact cars (subcompact plus compact) rose less rapidly than domestic intermediate, domestic large, or Japanese car prices from 1982 to 1984." The analysis adds:

> This pattern can be attributed in part to the relatively greater number of attractive Japanese product offerings in the lower end than in the higher end of the market, and to U.S. auto manufacturers' efforts to meet federal Corporate Average Fuel Economy (CAFE) standards. As a result of an unanticipated change in product mix (total U.S. small car sales fell from 61.5 percent in 1981 to about 54 percent of the market in 1984), two U.S. companies could not meet the model year 1983 or 1984 CAFE standards. To improve their ability to comply with the CAFE statute, these companies appear to have consciously exercised greater price restraint on small rather than large cars since 1983. They also have encouraged dealers to do the same through frequent use of special sales incentives on small cars. (Underlining supplied).

Do you agree with the Commerce Department's analysis? If not, please explain why. What consideration is NHTSA giving to this market change in reviewing its prior and future predictions relative to present and future standards? Did NHTSA predict, prior to 1981 or anytime thereafter, this change in product mix?

Answer: When the Energy Policy and Conservation Act requiring fuel ecohomy standards was passed in 1975, it was widely believed that the ability of U.S. manufacturers to influence the public's preference in automobiles through advertising techniques would be an important factor in achieving compliance with CAFE standards. However, the market share lost to imported automobiles, particularly in 1979-80, suggests that the power of advertising to effect significant changes in the product mix of domestic manufacturers was overestimated.

We agree with the Commerce analysis that price incentives and production limits are the principal, effective mechanisms for inducing a shift in the product sales mix. Clearly, such mechanisms may have been in force in the example cited in your question, although we have no confirmation that the effect was the result of deliberate corporate strategy. This Department has not produced independent forecasts of the automobile market. Manufacturer submissions, which provide background for their CAFE estimates, are generally compared to market forecasts of the major forecasting services and leading market analysts.

Question 8: Last July you stated that NHTSA does not "expect" any domestic manufacturer "will pay penalties" for not complying with the CAFE through model year 1985? (Hearings, "Auto Fuel Efficiency Standards" Part 2, Ser. No. 98-179, July 3, p. 90.) Is that still your view? What about model years 1986 and 1987, particularly in light of the enclosed Commerce analysis? What is the penalty situation regarding foreign automakers through model year 1987.

Answer: We will review this issue as part of our analysis regarding the post-1985 fuel economy petitions. Given the voluminous amount of material we have just received with these petitions and the responses to our December 10 notice requesting data about manufacturers' post-1985 fuel economy capabilities, it is too early for us to determine manufacturers' likely compliance or penalty situations for model years 1985-1987. Jaguar is the only company we know of that likely will be subject to penalties for failure to meet the standards through model year 1985.

Question 9: Using the table found on page 88 of the hearing of July 31, 1984, entitled "Auto Fuel Efficiency Standards" (Part 2), (Serial No. 98-179), please provide (for illustration purposes) the dollar value of any penalties that would be established by NHTSA, absent any carry-forward or carry-back credits.

Answer: The pre-model year report values cited on page 88 of the hearing transcript are now outdated and would yield a distorted picture of the MY 1984 CAFE situation. Therefore, in response to your question, we have used mid-model year reports for 1984. Final MY 84 CAFE figures are expected from EPA within several weeks, and we would be pleased to update the following chart for you at that time. Of course, the results would still be subject to the expected EPA test procedure adjustments (as noted in response to Question 6); and we would determine penalties only after taking available credits into account. We note that, as you requested, available credits are not taken into account on the following chart.

Passenger Cars (MY 1984 Std.: 27.0 mpg)

	CAFE Level	Value of Shortfall (calculated without taking into account available credits) (millions)
American Motors	35.5	N/A - exceeds std.
Chrysler	27.1	N/A - exceeds std.
Ford	25.1	$195
General Motors	24.8*	$534

*Quoting from GM's mid-model year report. This value includes "a CAFE credit...which GM believes to be appropriate due to changes EPA has made to the 1975 fuel economy test procedure." The credit figure used by GM is confidential.

Light Trucks: Composite (MY 1984 Std.: 20.0 mpg)

	CAFE Level	Value of Shortfall (calcuated without taking into account available credits) (millions)
Chrysler	18.4	N/A**

**Because the production value is confidential, the value of shortfall cannot be shown without revealing confidential information.

Light Trucks: 2-wheel drive (MY 1984 Std.: 20.3 mpg)

	CAFE Level	Value of Shortfall (calcuated without taking into account available credits) (millions)
General Motors	19.9	$15
Ford	19.0	$41

Light trucks: 4-wheel drive (MY 1984 Std.: 18.5 mpg)

	CAFE Level	Value of Shortfall (calculated without taking into account available credits) (millions)
American Motors	20.5	N/A - exceeds std.
General Motors	20.0	N/A - exceeds std.

Question 10: What is the effect, other than a civil penalty, on any manufacturer of a finding of unlawful conduct under section 507(a) of the Motor Vehicle Information and Cost Savings Act?

Answer: The only enforcement measures authorized by the Act against the "unlawful conduct" defined by section 507(a)--i.e., failure to comply with an average fuel economy standard--are the civil penalties enumerated in section 508. While there is a possibility that a finding of unlawful conduct could expose directors and officers of a manufacturer to liability in a shareholder's derivative suit, the risk of such liability would depend on applicable State corporation law and court decisions.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 3 1985

THE ADMINISTRATOR

RECEIVED
MAY 7 1985
Subcommittee on
Oversight and Investigations

Chairman John D. Dingell
Subcommittee On Oversight And Investigations
Committee On Energy And Commerce
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your letter of April 4, 1985 regarding the status of the Corporate Average Fuel Economy Adjustment rulemaking.

I still anticipate signing this rulemaking before the end of May. I will inform you if that schedule should slip as we move farther along in the review process. We do understand the importance of this rulemaking and are working to resolve the difficult technical issues it presents as soon as possible.

As currently drafted, the rule will use a combination of industry-wide and manufacturer-specific adjustments. We believe this approach will most fairly provide adjustments for all manufacturers while preserving the overall integrity of the CAFE procedure and the intent of Congress.

I hope this answers your concerns. As you requested, a copy of this response is being sent to the General Accounting Office.

Sincerely,

Lee M. Thomas

'85 MAY -7 PM 4:14

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U.S. House of Representatives
Subcommittee on Oversight and Investigations
of the
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Washington, DC 20515

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June 7, 1985

Honorable Lee M. Thomas
Administrator
Environmental Protection Agency
Waterside Mall -- West Tower
401 M Street, S. W.
Washington, D. C. 20460

Dear Mr. Thomas:

Thank you for your May 3, 1985 reply to my letter of April 4, 1985 concerning your agency's Corporate Average Fuel Economy (CAFE) rulemaking required by the court over two years ago. I note that the end of May has slipped by and that we are well into June with no rulemaking yet forthcoming. What is the delay?

Enclosed is a June 3, 1985 opinion of the Comptroller General. It clearly holds that:

-- "test changes are clearly authorized";

-- EPA has used "informal" Advisory Circulars to notify automakers only of "proposed test changes and to seek their input" and EPA "characterized its decisions made by Advisory Circulars as supplementary to the existing regulations";

-- EPA "maintained that only minor changes to the test procedures" were by Circular, but "EPA officials acknowledged that what constituted a 'minor' change was essentially a judgment call on the agency's part";

-- some changes "informally authorized" by the Environmental Protection Agency (EPA) by Advisory Circular "affected manufacturers' CAFE ratings";

-- the statute "expressly requires rulemaking," except in the case of "technical and clerical amendments" to EPA's rules, but "does not distinguish between 'minor' and other changes, as EPA has argued it is entitled to do";

- -- EPA "has never claimed that changes accomplished by Advisory Circular were only technical and clerical amendments, and the burden would be on the agency both to claim that exemption and to prove it if challenged";
- -- if "changes accomplished by Advisory Circular were not 'technical and clerical' matters, rulemaking was required by the statute, no matter how cumbersome it might have been to conduct";
- -- in the Notice of Proposed Rulemaking issued pursuant to court order, EPA proposes to continue to use these Circulars for "so-called 'minor' test changes" and sought to define "significant CAFE penalty" by mileage equivalents;
- -- the rulemaking requirement "depends on whether the proposed test changes" are "technical and clerical" under the law;
- -- this factor "does not neatly translate into a mileage equivalent, but rather relates to both the purpose and effect of the change"; and
- -- that EPA "should clearly state its legal basis for choosing informal procedures any time it elects to issue a test change by Advisory Circular and that it should be prepared to defend its claim to an exception if challenged."

In a nice and gentle way, the Comptroller General has indicated that the use in the past of Advisory Circulars as the rule rather than the exception was contrary to the law and that to the extent the new NPRM continues that practice, the agency should be challenged. The burden is on EPA to show that any test changes are "technical and clerical." In my judgment, history shows few could meet this test. EPA's final rule should reflect this opinion. Circulars, if used at all, should be used sparingly. Public participation should be allowed, not avoided.

Finally, the opinion confirms EPA's own view, as expressed in the NPRM, that EPA "was obligated to consider in a formal rulemaking the issue of CAFE adjustments to compensate for informal test changes." But the opinion does not question the remedy stated in your May 3 letter.

I reiterate my earlier point that EPA's long delay in this matter is not helpful to enforcement or the program generally. I urge that your agency achieve compliance with the law by issuing a final rule consistent with the enclosed opinion.

With best wishes.

Sincerely,

JOHN D. DINGELL
Chairman
Subcommittee on
Oversight and Investigations

Enclosure (1)

cc: Honorable Diane K. Steed, Administrator
National Highway Traffic Safety Administration

Honorable Charles A. Bowsher, Comptroller General
General Accounting Office

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

B-217744 June 3, 1985

The Honorable John D. Dingell
Chairman, Subcommittee on
Oversight and Investigations
Committee on Energy and Commerce
House of Representatives

Dear Mr. Chairman:

Your letter of February 8, 1985, requested our views on several matters relating to the Environmental Protection Agency's (EPA) handling of its testing responsibilities under the Corporate Average Fuel Economy (CAFE) program. Specifically, your concerns are: (1) the scope of EPA's authority to modify test procedures; (2) whether test modifications may be accomplished informally; and (3) whether EPA has adequately responded to an order of the Sixth Circuit Court of Appeals to address discrepancies resulting from test modifications made in 1979. A fourth issue regarding light trucks has been deferred by agreement with your staff.

Our views are, briefly, that EPA did not exceed its broad authority to change test procedures, but changes should have been made formally, unless one of the specific limited exceptions applied to a particular change, and that EPA's proposed rulemaking adequately responded to the court order. Our reasoning is explained more fully below.

I. BACKGROUND

In response to the energy crisis, the Congress created a comprehensive body of laws dealing with the production and conservation of energy resources. Among these new laws was the Energy Policy and Conservation Act, which included an amendment to the Motor Vehicle Cost Savings and Information Act. The latter amendment created the CAFE program. Pub. L. No. 94-163, § 301, 89 Stat. 871, 806, codified at, 15 U.S.C. §§ 2001-12 (1982). For the express purpose of reducing gasoline consumption by motor vehicles, Congress established average fuel economy standards. 89 Stat. 874, § 2(5). Through design improvements, technological advances, sales efforts and any other means available, each manufacturer was required on the average to meet a predetermined annual standard. Determination of a manufacturer's average fuel economy rating was based on the performance of representative vehicles on laboratory tests and computed with reference to the total sales of all vehicles of the representative type. 15 U.S.C. § 2003 (1982).

The law established the 1978-80 model year standards at 18, 19 and 20 miles per gallon, respectively. It also set the standard for 1985 and thereafter at 27.5 mpg. The Secretary of Transportation was authorized to set the 1981-84 incremental standards and to review individual manufacturer petitions for variances from the set standards.

EPA's responsibilities under the Act are to design and conduct the tests (which also measure exhaust emissions for Clean Air Act compliance), and to calculate manufacturers' CAFE ratings applying test results and sales data according to the statutory formula.

Manufacturers that fail to meet their CAFE standard face a penalty of $5 per 1/10th of an mpg per car produced by the manufacturer that year. A CAFE shortfall of 1/10th mpg for its fleet could easily cost a major manufacturer $20 million in penalties.

II. STATUTORY TESTING REQUIREMENTS

Issues presented in this case relate to EPA's execution of its authority to design and conduct the fuel economy performance tests. The main statutory provision relating to test design is as follows:

> "(d)(1) Fuel economy for any model type shall be measured, and average fuel economy of a manufacturer shall be calculated, in accordance with testing and calculation procedures established by the EPA Administrator, by rule. Procedures so established with respect to passenger automobiles * * * shall be the procedures utilized by the EPA Administrator for model year 1975 (weighed 55 percent urban cycle, and 45 percent highway cycle), or procedures which yield comparable results. * * *" 15 U.S.C. § 2003(d)(1) (1982)

Also relevant is subparagraph (3) of the same section, which reads:

> "(3) Testing and calculation procedures applicable to a model year, and any amendment to such procedures (other than a technical or clerical amendment), shall be promulgated not less than 12 months prior to the model year to which such procedures apply." 15 U.S.C. § 2003(d)(3) (1982).

The statute also provides that persons adversely affected by actions taken under the CAFE law may seek judicial review of those actions under the Administrative Procedure Act (APA) before their enforcement. 15 U.S.C. § 2004(a) (1982). This section applies to testing decisions as well as standard setting, and determinations of credits and penalties, etc.

III. SCOPE OF EPA'S AUTHORITY TO MODIFY TEST PROCEDURES

Several issues raised in the request relate to EPA's authority to modify the 1975 fuel economy performance test. EPA has argued that it has authority to make test changes to improve test accuracy and close loopholes. The automobile manufacturers claim that these changes make it more difficult for their cars to achieve the predetermined standard. The effect of such changes, they say, is to raise the CAFE standard contrary to the statute.

No one seriously contends that the Congress cast the 1975 test in concrete, never to be changed. The statute expressly acknowledges the possibility of amendments to the test procedures and requires only that they be promulgated a year in advance and that they yield comparable results to the 1975 test. The legislative history elaborated somewhat on EPA's authority. The House Report stated:

> "The words 'or procedures which yield comparable results' are intended to give EPA wide latitude in modifying the 1975 test procedures, so long as the modified procedure does not have the effect of substantially changing the average fuel economy standards." H.R. Rep. No 340, 94th Cong., 1st Sess. 92. (Hereafter, House Report.)

The relationship between tighter test procedures and more stringent standards was recognized. Though "comparable results" are not statutorily defined, the House Report would clearly have allowed slight changes in the fuel economy standards as a result of test procedure improvements. The provision originated in the House, and there is no other indication anywhere in the legislative history as to the proper construction of the term "comparable results," so we must assume the House Report was authoritative.

EPA also claimed authority to close loopholes in the 1975 test procedures. We think it has that authority within the limits set in the House Report cited above. It is obvious that Congress intended the CAFE law to produce dramatic reductions in fuel consumption, not just paper improvements in test results. Anticipated fuel savings were more than 3 million barrels of crude oil per day. The House Report also expressed the opinion that legally enforceable standards and penalties were indispensable to the success of the program. House Report at 86-87. Viewed in this context EPA's authority to close loopholes also seems clear.

At hearings in 1979, the Administrator of the National Highway Traffic Safety Administration testified that the gap between EPA test mileage and actual on-the-road mileage had increased significantly between 1975 and 1979. Motor Vehicle Fuel Efficiency: Hearings Before the Subcomm. on Energy and Power of the House Comm. on Interstate and Foreign Commerce, 96th Cong., 1st Sess. 19 (statement of Joan Claybrook) (hereafter Oversight Hearings). Given the statutory mandate to produce results comparable to the 1975 test and to reduce actual fuel consumption, we think EPA could have legitimately made test changes designed to narrow the gap between EPA test mileage and actual on-the-road mileage to its 1975 level. In other words, EPA could justify closing the loopholes that allowed such discrepancies to increase after 1975.

We are not in a position to analyze the efficacy of the test changes that have actually been made, or to evaluate their impact on the CAFE ratings of any specific manufacturer, but we think test changes are clearly authorized.

IV. NEED FOR RULEMAKING TO ACCOMPLISH CHANGES IN TEST PROCEDURES

Prior Test Changes

In the past, EPA used Advisory Circulars to notify automakers of proposed test changes and to seek their input. Advisory Circulars are informal and, according to EPA, non-binding. Oversight Hearings at 93. EPA characterized its decisions made by Advisory Circular as supplementary to the existing regulations. Id. at 91-93. EPA also maintained that only minor changes to the test procedures were made by Advisory Circulars. However, EPA officials acknowledged that what constituted a "minor" change was essentially a judgment call on the agency's part. We cannot assess the technical aspects of the test items handled by Advisory Circular, but it seems fairly clear that some changes informally authorized affected manufacturers' CAFE ratings.

Legal Requirements For Changes

The CAFE statute provides that test procedures shall be "established by the [EPA] Administrator, by rule." 15 U.S.C. § 2003(d)(1) (1982). Additionally, the statute provides that except for "technical and clerical amendment[s]" changes to test procedures shall be "promulgated not less than 12 months prior to the model year to which [they] apply." 15 U.S.C. § 2003(d)(3).

The statute expressly requires rulemaking in section 2003(d)(1) and reinforces the requirement for formal rulemaking in section 2003(d)(3) by using the word "promulgated" to describe the publication requirement. The statute allows only one exception to rulemaking, and that is for "technical and clerical amendment[s]" to the rules. The statute does not distinguish between "minor" and other changes, as EPA has argued it is entitled to do.

EPA has never claimed that the changes accomplished by Advisory Circular were only technical and clerical amendments, and the burden would be on the agency both to claim that exemption and to prove it if challenged. However, since a statutory exception exists, we are not prepared to rule out completely the possibility that EPA's past actions fall within the exception. If the changes accomplished by Circular were not "technical and clerical" matters, rulemaking was required by the statute, no matter how cumbersome it might have been to conduct.

Future Use of Advisory Circulars

In a Notice of Proposed Rulemaking (NPRM), discussed more fully below, EPA proposed to continue the use of Advisory Circulars for so-called "minor" test changes. 48 Fed Reg. 56526-36 at 56533. In a later related NPRM, EPA attempted to define a "significant CAFE penalty" as occurring when a test change or changes would likely have a negative CAFE impact of .10 mpg or more. 49 Fed. Reg. 48024. Logically, that would imply that "minor test changes" are those with an anticipated impact of -.10 mpg or less. See also 48 Fed Reg. 56528 at note 14.

As to future test changes, the applicability of the rulemaking requirement depends on whether proposed test changes are "technical and clerical" pursuant to the statute. This does not neatly translate into a mileage equivalent, but rather relates to both the purpose and effect of the change.

In addition to the statutory exception, there are also exceptions to the notice and comment requirements of the APA, 5 U.S.C. § 553 (1982) which might provide a legitimate basis for informal action on test changes. Again, if challenged, EPA would have to prove the applicability of these exceptions.

Interpretative rules need not be subjected to formal rulemaking. EPA's explanations of its use for Advisory Circulars at the 1979 Oversight Hearing might be construed as an argument that the changes it discussed were only interpretative rules. Oversight Hearings at 91-93. However, EPA has not yet claimed that this exception applies.

The second broad exception comes into play "when the agency for good cause finds * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. § 553(b)(B) (1982). EPA mentioned the "good cause" exception in the same NPRM in which it announced its intention to continue Advisory Circulars. 48 Fed. Reg. 56533 at note 19. However, the APA exception requires that to claim it, the agency must state its findings and incorporate "a brief statement of the reasons therefor in the rules issued." 5 U.S.C. § 553(b)(B) (1982). This latter prerequisite to the exception has not yet been accomplished.

The exceptions to formal rulemaking discussed above should obviously be employed on a case-by-case basis. They are not amenable to a blanket advance approval by rule as EPA has attempted in 48 Fed. Reg. 56533. Since these reasonable exceptions do exist, we are not prepared to state categorically that all future test changes must be done by rulemaking. However, we do think that EPA should clearly state its legal basis for choosing informal procedures any time it elects to issue a test change by Advisory Circular and that it should be prepared to defend its claim to an exception if challenged.

V. THE GM DECISION AND EPA'S RESPONSE

In 1979 General Motors and Ford petitioned EPA for relief from changes the agency made to the 1979 test procedures. The questioned changes had been made by Advisory Circular. When EPA denied the petition and reconsideration, the companies filed suit in the Sixth Circuit Court of Appeals.

In its order, dated January 26, 1982, the Court's finding was:

> "The EPA has made certain changes in the relevant [test] procedures. Now both Ford and General Motors seek adjustments so that current testing is comparable to the 1975 test procedures. They contend that the EPA made the proposed adjustments without complying with the Administrative Procedure Act, 5 U.S.C.A. § 551, *et seq.*, (1978) as 15 U.S.C.A. § 2004 (1980 Supp.) dictates it must.
>
> "We deem it appropriate to remand this case to the EPA so that it may initiate a proper rulemaking proceeding concerning procedures for establishing an adjustment factor for current tests to determine the corporate average fuel economy of manufactured vehicles covered by this statute." *General Motors v. Costle*, Nos. 80-3271, 80-3272, 80-3655 (6th Cir. Jan. 26, 1982).

A narrow, but reasonable, reading of the order is that EPA was obligated to consider in a formal rulemaking the issue of CAFE adjustments to compensate for informal test changes. The court made no decision on the merits. This left unresolved the substantive issues of the validity of Advisory Circulars, their application by EPA to "minor" test changes, and the meaning of "comparable results." However, it left EPA almost total discretion as to how to deal with the consequences of its 1979 test changes.

EPA responded by issuing an NPRM on December 21, 1983, almost 2 years after the court order was entered.[1] 48 Fed. Reg. 56526-36. The NPRM requested comments on three alternative proposals: netting of test change results; manufacturer specific adjustments to CAFE ratings; and an industry-wide average CAFE rating adjustment. These proposals seem logically to proceed from an assumption that manufacturers were damaged in their CAFE ratings by EPA's 1979 changes to the test procedures.

We are not in a position to analyze the validity of the technical judgments which underlie any of the proposed alternatives. Nor do we feel we should endorse or criticize any of the proposals, since the rulemaking is still open. We do not want to substitute our judgment for that of the agency. However, we do feel that the NPRM generally was a legally adequate response to the Sixth Circuit's mandate to address possible adjustment factors in a rulemaking.

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[1] This same NPRM also contained EPA's announcement that it would continue the Advisory Circular system, and was discussed in that context on p. 5 above.

We also thoroughly examined the statute and legislative history to determine whether there was any legislative mandate to make specific CAFE adjustments. While the statute directs the method for the original CAFE calculation and for the computation of CAFE credits, it does not address the possibility of corrections to the CAFE ratings because of deficiencies in the test procedures. The legislative history likewise provides no guidance. A statutory injunction to compute the CAFE adjustment in any particular way would only be by analogy to the other computation procedures. Absent a firm statutory basis, we are not persuaded that the Administrator's discretion to fashion a remedy for past test procedure inadequacies should be in any way curtailed.

VI. CONCLUSION

Because we are unaware of possible technical or clerical reasons which might justify EPA's past handling of the CAFE testing program or the proposed CAFE adjustments, we are not in a position to raise legal objections to those changes. We do think that in the future, EPA should use formal rulemaking to accomplish test changes, unless a specific exception ("technical and clerical amendment[s]" or APA exception) applies. Furthermore, decisions about exceptions should be made on a case-by-case basis.

We hope the foregoing information is useful to you. Unless you release it earlier, this opinion will be available to the public 30 days from today.

Sincerely yours,

for Milton J. Socolar

Comptroller General
of the United States

NINETY-NINTH CONGRESS

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CHIEF COUNSEL/STAFF DIRECTOR

U.S. House of Representatives
Subcommittee on Oversight and Investigations
of the
Committee on Energy and Commerce
Washington, DC 20515

ROOM 2323
RAYBURN HOUSE OFFICE BUILDING
PHONE (202) 225-4441

June 17, 1985

Honorable Charles A. Bowsher
Comptroller General
General Accounting Office
441 G Street, N. W.
Washington, D. C. 20548

Dear Mr. Bowsher:

Thank you for your helpful opinion of June 3, 1985 (B-217744) concerning the Environmental Protection Agency's (EPA) handling of its testing duties under the Corporate Average Fuel Economy (CAFE) program. Enclosed is my letter to the EPA releasing the opinion.

I am concerned, however, about your reference in the opinion under the heading "Future Use of Advisory Circulars" to 5 U.S.C. 553 and 5 U.S.C. 553(b). While that discussion does not appear to be crucial to your opinion, I wonder if it is consistent with the provisions of section 307(d)(1) of the Clean Air Act which appear to expressly indicate that the proposed EPA regulations and future changes in test procedures are not subject to 5 U.S.C. 553 or 553(b). If so, I believe that the exceptions mentioned by EPA are really not applicable to their test procedures. Also, it is my understanding that in the early 1970's, EPA, at the urging of the House Committee on Government Operations, adopted a policy not to utilize the "exceptions" to rulemaking in 5 U.S.C. 553(b). I would appreciate your considering these matters and advising me of your findings within 30 days.

Also, I assume, from reading your opinion, that you believe that EPA is obligated to compensate for the informal test changes made in violation of the law through some form of CAFE adjustments. The opinion seems to support that view, although maybe not expressly. Do you agree?

With best wishes.

Sincerely,

John D. Dingell

JOHN D. DINGELL
Chairman
Subcommittee on
Oversight and Investigations

Enclosure (1)

NINETY-NINTH CONGRESS

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U.S. House of Representatives
Subcommittee on Oversight and Investigations
of the
Committee on Energy and Commerce
Washington, DC 20515

July 9, 1985

Honorable Lee M. Thomas
Administrator
Environmental Protection Agency
Waterside Mall -- West Tower
401 M Street, S. W.
Washington, D. C. 20460

Dear Mr. Thomas:

Thank you for your June 25, 1985 reply to my letter of June 7 enclosing a copy of the Environmental Protection Agency's (EPA) final rulemaking required by court order of January 1982 on adjustments to Corporate Average Fuel Economy (CAFE) for foreign and domestic auto manufacturers as compensation for changes in EPA test procedures. I commend the EPA for issuing the long overdue rule.

I note your statement that:

> "It is our intent, as stated in the rule, that any CAFE effect of future test procedure changes made by EPA will be dealt with in a rulemaking forum."

However, I do not view this statement as being consistent with the General Accounting Office (GAO) opinion of June 3, 1985, particularly when read in light of the preamble to the new rule. The preamble seems to state that rulemaking will only be required where a "manufacturer's CAFE will likely be affected." But as the GAO points out, the applicable law "allows only one exception to rulemaking, and that is for 'technical and clerical' amendments to the rules." While the preamble no longer uses the word "minor" when referring to "changes," the effect of the preamble seems to be the same. The law and GAO both hold that rulemaking is required, whether or not there is a CAFE effect, unless EPA shows, on a case-by-case basis, that the changes are "technical and clerical."

Moreover, your approach to the matter is a non-public one. You state that in issuing Equipment Procedure Notices and Advisory Circulars, EPA "will assess the expected fuel economy impact" and the industry "will be notified of EPA's interim determination and provide the opportunity to comment." But the public will not know of the "interim determination" or of the industry's "comments," unless there is a later rulemaking. Indeed, it is possible that such a process would result in one automaker not knowing what a second or third automaker's comments are in regard to such a determination. Rulemaking allows a public process.

I request that EPA re-examine the matter in light of the GAO opinion and these comments. I am also sending a copy of this letter to the GAO for its review of the EPA final rule and comment to the Subcommittee.

Enclosed is a copy of a June 20, 1985 letter to you from the Center for Auto Safety.

The letter, which apparently was filed after the close of public ocmment, is critical of EPA's supplemental notice of December 1984. It states:

> The supplemental notice, therefore, is deficient in at least two respects. First, it does not propose a calculation method on which the public may comment. Second, it provides no indication to the public of the magnitude of the fuel economy adjustments that might be granted. In failing to provide this information, the supplemental notice does not satisfy the requirements of the Administrative Procedure Act. The APA requires that interested persons be provide an opportunity to comment on an agency proposal. The EPA's supplemental notice does not provide the public with that opportunity; it is not enough for the agency to report simply that it is considering a particular issue.
>
> The agency's failure to propose a calculation method on which the public can comment requires EPA to publish another NPRM setting forth a proposed calculation method. If EPA was unable to include a specific proposal in its NPRM -- because it had not yet developed one -- EPA should have published an interim notice requesting further information. At a later point, EPA could then publish a NPRM proposing a calculation method on which the public could comment.

The GAO opinion notes that when EPA responded to the court order in December 1983, it issued a notice requesting "comments on three alternative proposals: netting of test change results; manufacturer specific adjustments to CAFE ratings; and an industry-wide average CAFE rating adjustment." My review of the supplemental notice indicates that it is consistent with the first notice in this regard. Further, a review of the preamble to the final rule does not indicate any comment by the Center on the supplemental notice. Nevertheless, the Center's allegations of a deficiency are of interest and I request that you and the GAO indicate to me whether or not the alleged deficiency exists. The EPA should also indicate whether or not the Center has raised this concern during the public comment period.

With best wishes.

Sincerely,

JOHN D. DINGELL
Chairman
Subcommittee on
Oversight and Investigations

Enclosure (1)

cc: Honorable Edward J. Markey, Chairman
Subcommittee on Energy Conservation and Power

Honorable Charles A. Bowsher, Comptroller General
General Accounting Office

Honorable Diane K. Steed, Administrator
National Highway Traffic Safety Administration

Center for Auto Safety

2001 S Street N.W., Suite 410
Washington, D.C. 20009
(202) 328-7700

June 20, 1985

Mr. Lee Thomas
Administrator, Environmental
Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Re: EPA Supplemental Notice of Proposed Rulemaking: Fuel Economy Test Procedures for Adjustment of CAFE Results to Compensate for Changes In Test Procedures 49 Fed. Reg. 48024 (1984) 48 Fed. Reg. 56526 (1983).

Dear Mr. Thomas:

It has recently come to the attention of the Center for Auto Safety that the Environmental Protection Agency may be considering granting corporate average fuel economy (CAFE) adjustments for prior years far in excess of what EPA has proposed in its notices of proposed rulemaking. Because the EPA's rulemaking notices thus far have failed to provide information that is adequate to enable the public to comment, we request the EPA to issue an additional supplemental notice of proposed rulemaking before adopting any such changes. Moreover, we oppose the CAFE adjustments proposed in the notices and the even higher ones said to be under consideration.

On December 7, 1984, the EPA published a supplemental notice of proposed rulemaking regarding proposed procedures for the adjustment of CAFE results to compensate for changes in test procedures. Essentially the notice says that the agency is considering making changes in a general area, but the notice sets forth no agency proposal on which the public may comment.

In the supplemental notice of proposed rulemaking, EPA states that it "proposes to apply an additional industry-wide CAFE adjustment for the 1980 and later model years to account for the effects of the test fuel properties." 49 Fed. Reg. 48024. The notice reports that, after the close of the comment period in the original NPRM, EPA received a request from General Motors asking for CAFE adjustments on the basis of changes in test fuel properties. GM submitted a proposed calculation method for determining these adjustments. EPA reports that it is studying GM's proposal, although EPA says that it is not yet clear to the agency whether the GM estimates are appropriate for recent technology vehicles.

Finally, the notice says that EPA has not determined either: 1) the method of calculation for such fuel economy adjustments based on fuel test properties, or 2) the actual mpg adjustments. Instead, EPA says that "the actual numerical credits [adjustments] will be determined in the final rule by use of a calculation method to be adopted in the final rule." 49 Fed. Reg. 48025.

The supplemental notice, therefore, is deficient in at least two respects. First, it does not propose a calculation method on which the public may comment. Second, it provides no indication to the public of the magnitude of the fuel economy adjustments that might be granted. In failing to provide this information, the supplemental notice does not satisfy the requirements of the Administrative Procedure Act. The APA requires that interested persons be provided an opportunity to comment on an agency proposal. The EPA's supplemental notice does not provide the public with that opportunity; it is not enough for the agency to report simply that it is considering a particular issue.

The agency's failure to propose a calculation method on which the public can comment requires EPA to publish another NPRM setting forth a proposed calculation method. If EPA was unable to include a specific proposal in its NPRM -- because it had not yet developed one -- EPA should have published an interim notice requesting further information. At a later point, EPA could then publish a NPRM proposing a calculation method on which the public could comment.

In Wagner Electric Corp. v. Volpe, 466 F.2d 1013(1972) the Court of Appeals overturned an agency regulation because the agency's notice, as the EPA's notice here, provided insufficient notice to the public. In that case, the Administrator of the National Highway Traffic Safety Administration published a notice proposing to adopt a rule, modeled on an industry standard, but with some significant changes to the industry standard. The Court of Appeals held that the agency's notice was insufficient to give interested parties an opportunity to comment on the entire standard. The Court also held that the notice's omission of the fact that the agency might modify the rule in a manner undisclosed in the rulemaking notice also constituted inadequate notice to the public. The Court noted, that one aspect of the rule, which was not included in the notice could have been of considerable interest to consumer advocates. The Court observed: The "absence of comment from such groups may well be because the notice of proposed rulemaking never advised of this subject or issue. Thus we conclude that there was no adequate notice of proposed rulemaking." 466 F.2d 1020. Similarly, in this case, EPA's failure to provide any indication of the magnitude of the possible fuel economy adjustments that might be granted undoubtedly served to minimize comments from consumer advocates. Obviously, consumer organizations would be much more likely to comment on a proposal that granted significant adjustments that one which granted only a very miniscule credit.

According to non-public information not in the rulemaking proposal or docket and obtained only within the last few days, EPA will propose a CAFE adjustment of at least twice as high as that originally proposed. If this adjustment is as high as 0.5 MPG, then the unstated impact on energy conservation is enormous. The 1986 model year new car fleet which is to achieve 27.5 MPG would only have to achieve 27.0 MPH. The increased lifetime fuel consumption for the 1986 new car fleet is 673 million gallons of gasoline. Once the entire passenger car fleet is subject to the adjustment, the loss in energy savings is ten times this or 6.7 billion gallons. Yet no where in the notices of proposed rulemaking does EPA alert the public to this impact so that the public could comment thereon.

The impact of a 0.5 MPG CAFE adjustment is even greater because auto companies can use the adjustment from each model year to carry forward or back for three years to reduce penalties imposed under the Energy Policy and Conservation Act. This matter is of such serious public import that two Senate Committees have held hearings thereon within the last month and the Department of Transportation is conducting two proceedings relating to the use of these credits. No where in these DOT proceedings is the public told that EPA is considering a CAFE adjustment as high as 0.5 MPG. By concealing the magnitude of potential adjustments, EPA is seriously handicapping public policymaking.

EPA's approach in this rulemaking simply does not meet with the requirements of notice and comment rulemaking. As the Court in Wagner Electric Corp. held, "the Administrative Procedure Act requires notice before rulemaking, not after." 466 F.2d 1020. EPA should therefore publish an additional NPRM setting forth a proposed calculation method and notifying the public of the magnitude of adjustments that would be granted under such a method.

No Adjustment Is Warranted to CAFE

While the Center is of the opinion EPA must issue a supplemental notice of proposed rulemaking as explained above, the Center reiterates its longstanding position in this rulemaking that if any CAFE adjustment should be made to account for changes in test procedures since 1975, they should be negative ones which lower a manufacturer's CAFE rather than positive ones which raise CAFE. (See e.g., Amicus Brief of Center for Auto Safety (Dec. 8. 1980) in Ford v. EPA, Bi, 80-3272, CA 6, dec'd Jan. 26, 1982.) More specifically, the overall impact of test procedure changes have been to raise CAFE rather than to lower it. EPA itself recognizes in this rulemaking that the change in mileage accumulation has raised CAFE by 0.3 MPG industrywide with GM benefiting by as much as 0.5 MPG. Similarly, reduction in dynamometer power absorption has resulted in an additional 0.7 MPG increase in CAFE.

EPA has proposed not to make any adjustments for "CAFE-increasing" changes in test procedure. Instead, the agency would make adjustments only for "CAFE-reducing" changes in test procedure. Such a position is inconsistent with the legislative history and language of EPCA which would provide for comparable results between mileage measured on the original 1975 test procedure and present test procedure. To make adjustments in only one direction would distort the CAFE measured and be in conflict with EPCA. To the extent EPA makes a CAFE adjustments, it must take into consideration both positive and negative changes which would effectively preclude any CAFE adjustment as proposed by EPA in either its public notices or private decisionmaking.

Sincerely,

Clarence M. Ditlow III

cc: Docket No. A-83-44 EPA
Gerald Yomada, Acting General Counsel, EPA
Charles Elkins, Acting Assistant
Administrator for Air and Radiation EPA

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON D.C. 20460

AUG 2 1985

THE ADMINISTRATOR

RECEIVED
AUG 5 1985
Subcommittee on Oversight
and Investigations

Chairman John D. Dingell
Committee on Energy and Commerce
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your July 9, 1985 letter concerning the Environmental Protection Agency's (EPA's) final rule adjusting auto manufacturers' Corporate Average Fuel Economy (CAFE) to compensate for past changes in EPA test procedures (50 Fed. Reg. 27172, July 1, 1985). Your letter noted two areas of concern. First, you are concerned that EPA may make future test-procedure changes that may affect CAFE without following applicable rulemaking procedures. Second, you requested information relating to the letter of June 20, 1985, from the Center for Auto Safety to the Agency, which argues that EPA did not provide sufficient notice of its proposal to grant CAFE credits for variations in test fuel properties to permit full public comment. Let me address both of these matters.

Changes in CAFE test procedures actually raise two separate issues. The first is whether EPA must make a particular change through rulemaking. EPA has always used rulemaking procedures when it has changed CAFE test procedures that are codified in the Code of Federal Regulations. EPA has also used rulemaking to add significant new procedures. In general, we believe other, less significant changes have been of the kinds contemplated by exceptions to rulemaking requirements such as those discussed in the General Accounting Office (GAO) opinion of June 3, 1985. In any event, we intend to make future changes only by rulemaking unless a specific exception applies and will make such determinations on a case-by-case basis as the GAO opinion suggests.

The second issue raised by test-procedure changes is whether adjustment of manufacturers' CAFEs is warranted by a particular change and, if so, what the magnitude of the adjustment should be. Whether or not a particular change is made through rulemaking, EPA will decide these questions through rulemaking in all cases.

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U.S. HOUSE OF REPRESENTATIVES

As discussed in the preamble to the final rule, the timing of such rulemaking actions on CAFE adjustments will vary with the nature of the test-procedure changes involved and how they were adopted. Where EPA promulgates a test-procedure change through rulemaking, it will resolve in the same action the CAFE effect of the change. Where EPA does not proceed by rulemaking but predicts that a change will substantially affect CAFE, it will initiate a rulemaking to determine the extent of the CAFE adjustment due. Where EPA does not predict a substantial CAFE impact, it will advise manufacturers of the Agency's assessment and request comments. If comments indicate that a CAFE effect is likely, EPA will conduct a rulemaking to determine what, if any, CAFE adjustment to grant.

Even where neither EPA nor the manufacturers expect a test procedure change to have any CAFE impact, that issue will still be resolved through rulemaking. However, since a CAFE adjustment is unlikely to result, for efficiency the rulemaking on any adjustment for that change will be deferred until a later date when it can be grouped with other changes. When a CAFE adjustment rulemaking is next undertaken, all changes of that nature will be evaluated together for final action. Since CAFE adjustments can be applied retroactively, this mechanism will allow the full application of any appropriate CAFE adjustments for the changes involved.

Regarding the Center for Auto Safety's letter, a copy of the Agency's response is enclosed. As discussed more fully in that response, we believe that sufficient detail was provided to allow full public comment on EPA's proposal to grant CAFE credits for variations in test fuel properties and on the method ultimately adopted for calculating those credits.

The June 20 letter from the Center for Auto Safety was the only correspondence received from this organization in response to EPA's notices proposing CAFE adjustments. Since it was submitted long after the close of public comment period and only one day before I signed the final rule, we were unable to address it directly in the final rule. The Center did file an amicus curiae brief in the Sixth Circuit case that led to the rulemaking. Its position as set forth in that brief was taken into consideration in developing the rulemaking proposals.

I appreciate your bringing these matters to the Agency's attention so that we might directly address your concerns.

Sincerely,

Lee M. Thomas

Lee M. Thomas

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL 22 1985

OFFICE OF
AIR AND RADIATION

Mr. Clarence Ditlow
Center for Auto Safety
2001 S Street, N. W., Suite 410
Washington, D. C. 20009

Dear Mr. Ditlow:

Thank you for your letter of June 20, 1985, to Lee M. Thomas, Administrator of the Environmental Protection Agency (EPA). In your letter you expressed concern that the Agency may not have provided sufficient detail in its December 7, 1984 notice of proposed rulemaking (NPRM) to permit informed comment on EPA's proposal to grant Corporate Average Fuel Economy (CAFE) credits for inadvertent changes in test fuel properties. As I believe you are aware, your letter was received too late to be considered prior to the Administrator's signing of the final rule. Your request for an interim NPRM cannot now be granted.

In any event, we believe that the December 1984 NPRM provided sufficient notice on this subject to allow fully informed comment by all interested parties and an appropriate final decision by the Agency. The NPRM unambiguously proposed CAFE adjustments for changes in EPA test fuel properties and listed the specific adjustments that had been suggested by General Motors (GM) for model years 1981 through 1984. The notice also made clear that the methodology suggested by GM for calculating the CAFE adjustment was the only methodology being considered by EPA. The notice specifically requested comments on GM's approach and on EPA's concerns with that approach, as detailed in an exhaustive analysis EPA prepared and placed in the rulemaking docket at the time of the proposal. EPA's analysis, referenced in the December 1984 notice, provided reviewers with enough detail to calculate the likely CAFE impact of adopting GM's methodology. Significantly, EPA received a number of specific comments on whether GM's methodology was appropriate for calculating the CAFE adjustment. Since EPA ultimately promulgated a methodology virtually identical to that suggested by GM, the notice clearly provided sufficient information to enable the public to comment.

We appreciate your concern. Administrator Thomas and Administrator Ruckelshaus before him have emphasized the need to solicit full public participation in our rulemakings. We believe the CAFE adjustment rulemaking was fully open and impartial in seeking public comment. My office will always follow this principle and invites your continued participation in future rulemakings.

Sincerely yours,

Richard D. Wilson
Director, Office of Mobile Sources

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

B-217744

August 13, 1985

RECEIVED
AUG 1 4 1985
Subcommittee on Oversight
and Investigations

The Honorable John D. Dingell
Chairman, Subcommittee on
Oversight and Investigations
Committee on Energy and Commerce
House of Representatives

Dear Mr. Chairman:

Your letter of June 17, 1985, asked two follow-up questions to our opinion B-217744, dated June 3, 1985, on the Environmental Protection Agency's (EPA) administration of its testing responsibilities under the Corporate Average Fuel Economy (CAFE) program. 15 U.S.C. §§ 2001-12 (1982). First, you question our application of the Administrative Procedure Act (APA) to CAFE rulemaking. Your concern arises because section 307(d) of the Clean Air Act (42 U.S.C. § 7607(d) (1982)) prescribes somewhat more stringent procedures for Clean Air Act rulemaking. Second, you recall that EPA had a policy not to claim the interpretative rules and good cause exceptions to the notice and comment requirements in the APA. 5 U.S.C. § 553(b) (A) and (B) (1982). For the reasons indicated below, we reaffirm our June 3 opinion as regards the availability of the APA exceptions, but we are unable to determine the status of any EPA policy renouncing the use of the rulemaking exceptions.

Your first question arises because the CAFE law expressly mentions emissions testing under the Clean Air Act. Section 2003(d)(1) of Title 15 requires that "to the extent practicable," fuel economy testing procedures "be conducted in conjunction with emissions tests conducted under section 206 of the Clean Air Act [42 U.S.C. § 7525]".

Using the plain meaning of the words "conducted in conjunction with" we understand the CAFE language to mean that fuel economy and emission tests should be administered at the same time. We do not find any implications in this language that rules establishing CAFE test procedures were to be subject to specialized Clean Air Act rulemaking procedures. Moreover, we note that the CAFE rules, including those rules establishing test procedures, are specifically subject to APA judicial review. 15 U.S.C. § 2004(a) (1982)). This is another indication that the APA applies.

Section 307(d) (42 U.S.C. § 7607(d) (1982)), was added in its entirety by the Clean Air Act Amendments of 1977. It contains a list of 13 different rulemaking actions to which it applies, and CAFE is not listed. However, the section does apply to the emissions testing program (sections 202 and 206 of the Act, 42 U.S.C. §§ 7521 and 7525). 42 U.S.C. § 7607(d)(1)(J) (1982). The emissions testing sections were also amended in 1977, but they did not reference CAFE, either. The failure of the later enacted statute to refer to CAFE when imposing additional rulemaking requirements on the related program militates against an interpretation which would apply section 307(d) to CAFE. This is consistent with our interpretation of 15 U.S.C. § 2003(d)(1), discussed above.

Furthermore, by its own terms, section 307(d)(1) of the Clean Air Act expressly allows EPA to invoke the APA notice and comment exceptions. The pertinent part of the statute reads as follows:

> "The provisions of section 553 through 557 and section 706 of title 5 [the APA rulemaking and judicial review provisions] shall not, except as expressly provided in this subsection, apply to actions to which this subsection applies. This subsection shall not apply in the case of any rule or circumstances referred to in subparagraphs (A) or (B) of subsection 553(b) of title 5." 42 U.S.C. § 7607(d)(1)(1982).

Subparagraphs (A) and (B) are the interpretative rule and good cause exceptions discussed in our June 3 letter.

On your question about EPA's policy of not invoking the exceptions to the APA notice and comment provisions, we made informal inquiries in the Office of Air, Noise and Radiation. No one there recalled the policy you described. Since you thought the policy might have been instituted in the early 1970's as the result of inquiries by the Government Operations Committee, we also reviewed the commercially produced abstracts of open hearings held by that Committee from 1971 through 1976. We found no topic abstracted which would lead us to believe that a promise or policy concerning rulemaking procedures was announced by EPA as the result of testimony on Clean Air Act or general administrative issues.

You also asked whether our June 3 opinion should be read as holding "that EPA was obligated to compensate for the informal test changes made in violation of the law through some form of CAFE adjustments." We think this interpretation overstates our position.

In our June 3 opinion we did not conclude that EPA violated the law by using Advisory Circulars to institute test changes. We pointed out that there are several broad exceptions to the rulemaking requirement which might have legitimized the informal procedures used. Also, we neither stated nor meant to imply that EPA was obligated to make CAFE adjustments as a result of its changes in test procedures. We did, however, observe that EPA seemed to proceed from the assumption that manufacturers suffered CAFE losses as a result of informal test changes. We went on to find that the NPRM of December 21, 1983 (48 Fed. Reg. 56526) was a legally adequate response to the Sixth Circuit Court of Appeals order to consider "procedures for establishing an adjustment factor * * *." General Motors v. Costle, Nos. 80-3271, 80-3272, 80-3655 (6th Cir. Jan. 26, 1982).

We trust this information satisfies your need for clarification of our earlier opinion. Unless agreed otherwise, this letter will be available to the public 30 days after issuance.

Sincerely yours,

Milton J. Socolar

for Comptroller General
of the United States

NINETY-NINTH CONGRESS

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Subcommittee on Oversight and Investigations
of the
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Washington, DC 20515

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September 4, 1985

Honorable Lee M. Thomas
Administrator
Environmental Protection Agency
Waterside Mall -- West Tower
401 M Street, S. W.
Washington, D. C. 20460

Dear Mr. Thomas:

I received your August 2, 1985 letter and enclosure in reply to my July 9 letter concerning your agency's final rule adjusting the auto manufacturer's Corporate Average Fuel Economy (CAFE) as required by the court in January 1982.

Your reply is very helpful, particularly in regard to the future handling of changes. I understand that this will occur "only by rulemaking unless a specific exception applies" and your agency "will make such determinations in a case-by-case basis as the GAO opinion suggests." The assurances provided in your letter are welcome and are satisfactory. Please advise the Subcommittee should your agency modify these procedures.

With best wishes.

Sincerely,

John D. Dingell

John D. Dingell
Chairman
Subcommittee on
Oversight and Investigations

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CHIEF COUNSEL/STAFF DIRECTOR

U.S. House of Representatives
Subcommittee on Oversight and Investigations
of the
Committee on Energy and Commerce
Washington, DC 20515

ROOM 2323
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November 1, 1985

Honorable Diane K. Steed
Administrator
National Highway Traffic Safety Administration
Department of Transportation
400 Seventh Street, S. W.
Washington, D. C. 20590

Dear Ms. Steed:

Enclosed for your information, review, and comment is an August 30, 1985 opinion of the Comptroller General of the United States and an October 25 clarification of that opinion concerning the petitions filed with your agency relative to the Corporate Average Fuel Economy standards. Our letter of September 23 requesting that clarification is also enclosed.

We welcome your comments.

Sincerely,

JOHN D. DINGELL
Chairman
Subcommittee on
Oversight and Investigations

Enclosures (3)

cc: Honorable Charles A. Bowsher

U.S. House of Representatives
Subcommittee on Oversight and Investigations
of the
Committee on Energy and Commerce
Washington, DC 20515

September 23, 1985

Honorable Milton J. Socolar
Acting Comptroller General
of the United States
General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Socolar:

Thank you for your August 30, 1985 letter opinion (B-217744.2) which is quite helpful in concluding that petitions must be filed before the beginning of a model year. However, while I agree with your "Conclusion" that there is sufficient flexibility in the statutory definition of the "term model year" and that the "definition" of that term "is not seriously in question," you seem to undercut that "flexibility" and definition with your use, after mentioning a 1983 court decision, of the date "October 1" on pages 5 and 6 of the opinion. Such use may have the possible (and I assume unintended) effect of indicating that NHTSA must decide on a petition on or before October 1. That is not the NHTSA practice in the case of the standard for light trucks for model year 1985. That standard was published in the Federal Register on October 22, 1984 (see 49 F.R. 41250). It was signed on October 16 or fifteen days after "October 1."

In the above cited Federal Register notice, NHTSA said that "the single court to address the issue has stated only that a given model year begins in the fall of the preceding calendar year (e.g., fall 1984 is the beginning of the 1985 model year)." The court mentioned is the U.S. Court of Appeals for the District of Columbia Circuit which, in Center for Auto Safety v. National Highway Traffic Safety Administration, No. 81-2245, June 21, 1983, refers to the "autumn" of 1984. The court did not limit the term "fall" or "autumn" (which spans the period of September 21 to December 21) to a single date. There is no "magic" in a single date, particularly if that date might fall on a non-working day. Further, firms have been known to start selling new cars in various months and in the case of a strike, sometimes later. In short, the actual date may vary. But NHTSA's adoption of the "fall" for the beginning of a model year without specifying any date therein seems reasonable and consistent with your interpretation of the law.

Please note that on March 28, 1985 and July 22, 1985, NHTSA restated that the model year begins in the "fall" (see 50 F.R. 12344 and 29924). To my knowledge, NHTSA has never (contrary to the suggestion of your opinion) used the term "about October 1" or "October 1," although I understand the Center for Auto Safety uses the term "around the 1st of October," whatever that means.

Additionally, NHTSA has not told any firm when it must file a petition, other than to say it should be done in the "early part of the preceding calendar year." I note that NHTSA has never said that the Ford-General Motors petitions now pending at NHTSA for cars was filed too late. We all know that agency review, particularly when accompanied by review at the Office of Management and Budget, can be slow. The petitioner should not be penalized at the end of process, assuming it was timely started before the beginning of the model year.

I am returning your original opinion in order that you may reconsider it in light of the above comments.

Sincerely,

John D. Dingell
Chairman
Subcommittee on
Oversight and Investigations

Enclosure (1)

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. [illegible]

B-217744.2 October 25, 1985

The Honorable John D. Dingell
Chairman, Subcommittee on Oversight
and Investigations
Committee on Energy and Commerce
House of Representatives

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Subcommittee on Oversight
and Investigations

Dear Mr. Chairman:

Your letter of September 23, 1985, asked for clarification of our opinion B-217744.2, dated August 30, 1985. We hope the following statement will alleviate your concern about interpreting our opinion.

We made only two findings in our opinion. First, we held that the National Highway Traffic Safety Administration (NHTSA) correctly determined that petitions to reduce Corporate Average Fuel Economy standards are untimely if filed after the beginning of the model year. Second, we found that NHTSA's apparent definition of the "model year" as the prevailing and traditional automobile marketing period is reasonable.

We did not establish any particular date as the start of the model year, and we offered no opinion on the timing of regulations to reduce standards. We neither stated nor meant to imply a date by which future regulations reducing standards must be issued. We mentioned October first in our opinion only to recapitulate NHTSA's indirect reference to that date when issuing 18-month leadtime regulations in 1981. We did not intend to impinge on the Administrator's capacity to fix the model year or to issue regulations as appropriate and timely. On the contrary, it was our intent to endorse as reasonable the Administrator's use of the traditional marketing period and "the fall" as the beginning of the model year for the purpose of standard setting.

Because our opinion did not specify a starting date it could be misconstrued. We hope this clarification of the opinion (the original of which is returned herewith), avoids any possible misinterpretation. As agreed with your staff both the opinion and this clarification will be available to the public 20 days from the date of this letter.

Sincerely yours,

for Milton J. Socolar
Comptroller General
of the United States

Enclosure

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

B-217744.2 August 30, 1985

The Honorable John D. Dingell
Chairman, Subcommittee on
  Oversight and Investigations
Committee on Energy and Commerce
House of Representatives

Dear Mr. Chairman:

Your letter of February 8, 1985, requested that we examine several matters concerning the Corporate Average Fuel Economy (CAFE) program. Three issues relating to the Environmental Protection Agency's (EPA) fuel economy testing practices were addressed in B-217744, June 3, 1985. You also asked us to review the legal analysis supporting the National Highway Traffic Safety Administration's (NHTSA) decision to deny as untimely Ford Motor Company's 1984 mid-model-year petition to lower fuel economy standards for light trucks. That issue, which was deferred earlier by agreement with your staff, is the subject of this response. Also, at the request of your staff, we shall examine NHTSA's determination of what is a "model year." Briefly, our view is that the statutory language is ambiguous, but the legislative history adequately supports NHTSA's decision on the Ford petition. We also have no objection to NHTSA's informal definition of "model year."

Factual Background

On November 21, 1983, Ford filed a petition with the Secretary of Transportation requesting variances from the established fuel economy standards for its light trucks produced in model years 1984 and 1985. On behalf of the Secretary, NHTSA granted the petition for 1985 but denied the 1984 petition as untimely since it was filed during the model year to which it pertained. 49 Fed. Reg. 22576 (May 30, 1984). On July 19, 1984, Ford requested a legal opinion substantiating the denial. NHTSA's reply, dated August 23, 1984, analyzed the legislative history of the CAFE law and confirmed the agency's earlier position.

Statutory Background

Four different statutory provisions bear on the Ford petition and NHTSA action. Most central to the issue is the Secretary's authority to amend the CAFE standards. That authority is found at 15 U.S.C. § 2002(f) which reads as follows:

> "(1) The Secretary may, by rule, from time to time, amend any average fuel economy standard prescribed under subsection (a)(3), (b), or (c) of this section, so long as such standard, as amended, meets the requirements of subsection (a)(3), (b), or (c) of this section, as the case may be.
>
> "(2) Any amendment prescribed under this section which has the effect of making any average fuel economy standard more stringent shall be--
>
> > "(A) promulgated, and
> >
> > "(B) if required by paragraph (4) of subsection (a) of this section, submitted to the Congress,
>
> at least 18 months prior to the beginning of the model year to which such amendment will apply."

Subsection (b) of section 2002, referenced in the quoted statute, is the Secretary's authority to set fuel economy standards for light trucks. That subsection requires the Secretary to set the standards at the "maximum feasible fuel economy level."

The statute goes on in section 2002(e) to provide that:

> "For purposes of this section, in determining maximum feasible average fuel economy, the Secretary shall consider--
>
> > "(1) technological feasibility;
> >
> > "(2) economic practicability;
> >
> > "(3) the effect of other Federal motor vehicle standards on fuel economy; and
> >
> > "(4) the need of the Nation to conserve energy." 15 U.S.C. § 2002(e) (1982).

The fourth section important in analyzing the Ford petition is the provision allowing modification of the civil penalties imposed for exceeding the standards. Assessed penalties:

> "* * * may be * * * compromised, modified, or remitted only to the extent--

> "(A) necessary to prevent the insolvency or bankruptcy of such manufacturer,
>
> "(B) such manufacturer shows that the violation of section 2007(a)(1) or (2) of this title resulted from an act of God, a strike, or a fire, or
>
> "(C) the Federal Trade Commission has certified that modification of such penalty is necessary to prevent a substantial lessening of competition * * *." 15 U.S.C. § 2008(b)(3) (1982).

Discussion of the Ford Petition

Subsection 2002(f), the statutory provision authorizing NHTSA to amend standards, is ambiguous on the question of timing. Amendments which would increase CAFE stringency are expressly required to be promulgated at least 18 months in advance of the model year. However, the law is silent as to the timing of amendments which would relax CAFE standards. Reference to the legislative history of the provision clarifies the congressional intent.

The final Conference Report on the CAFE law explains the meaning of subsection (f) as follows:

> "Average fuel economy standards * * * may be amended from time to time as long as each such amendment satisfies the 18 month rule--i.e., any amendment which has the effect of making an average fuel economy standard more stringent must be promulgated at least 18 months prior to the beginning of the model year to which such amendment will apply. An amendment which has the effect of making an average fuel economy standard less stringent can be promulgated at any time prior to the beginning of the model year in question." S. Rep. No. 516, 94th Cong., 1st Sess. 157 (emphasis added).

This explanation in the Conference Report tips the scale in favor of NHTSA's position that petitions to lower CAFE standards may only be considered before a model year actually begins.

Ford suggests that the last quoted sentence was solely "intended to emphasize the fact that, in contrast to the situation in which more stringent standards are established, there is no leadtime requirement with respect to less stringent standards." Ford letter of July 19, 1984, at 2 (emphasis in original). However, this suggestion is clearly contrary to the only possible interpretation of the quoted sentence.

In elaborating on its position, Ford places great weight on the "maximum feasible" level of fuel economy. According to Ford, Congress specified the maximum feasible level to protect manufacturers against the Secretary setting unattainable fuel economy standards. Ford further states that sales trends play a major role in establishing the ability of manufacturers to meet CAFE standards. These facts are undoubtedly true, but Ford's conclusion based on these facts--that NHTSA is compelled to lower standards in the middle of a model year based on poor sales--does not necessarily follow.

Subsection 2002(e) (quoted above) sets forth the factors to be applied in determining the "maximum feasible fuel economy level." Sales effectiveness, consumer preference, and market trends are not among the factors to be considered. Additionally, the statutory provision regarding amendments is strictly permissive. Amendments "may" be made "from time to time." There is no basis that we can see to compel amendments, either upward or downward, in the CAFE standards.

Furthermore, a mid-year petition to lower standards is essentially no different than a request to modify penalties. It is an anticipatory request for relief from the expected expenditure of credits or the assessment of monetary penalties. The Conference Report mentioned above shows that the Senate version of the CAFE law would have allowed penalties to be waived on the basis of unanticipated sales trends resulting in failure to meet the CAFE average. This is exactly the reasoning that Ford is advancing to support mid-year amendment of the standards. S. Rep. No. 516, 94th Cong., 1st Sess. 152. See also, 121 Cong. Rec. 30606 (1975), reproducing the original Senate language. Since this language was eliminated from the final version by the Conference amendment of the CAFE law, we assume that the Congress intended that sales data not be taken into account to excuse CAFE shortfalls. We think this amendment strongly supports the conclusion that a mid-year lowering of standards (to compensate for unbalanced sales figures and avoid future penalties) would also be improper.

Definition of "Model Year"

There is a statutory definition of a "model year" in 15 U.S.C. § 2001(12). It does not appear to be tied to any other section specifically. Instead, it appears to be applicable in all contexts in which the term "model year" is used. The definition reads as follows:

> "The term 'model year', with reference to any specific calendar year, means a manufacturer's annual production period (as determined by the EPA Administrator) which includes January 1 of such calendar year. If a manufacturer has no annual production period, the term 'model year' means the calendar year."

While the existence of a statutory definition would ordinarily settle any question about the meaning of the term "model year," the definition does not establish a starting date for the model year. It allows the "model year" to be tailored to each manufacturer's annual production period or to a common production period, in the judgment of the EPA Administrator. Further, there is no requirement that the EPA Administrator adopt the same time period for every purpose. As a practical matter, there are at least three other working definitions of a model year--one for the purpose of manufacturer reporting, a second for the purpose of standard setting, and a third for use in CAFE testing and labeling.

In 1977, NHTSA and EPA agreed to set the calendar year as the "model year" for manufacturers' semiannual reports. 42 Fed. Reg. 62374, 63276. Under this version of a model year, the "premodel year" report is due in December of the prior calendar year. 49 C.F.R. Pt. 537 (1984).

For the purpose of standard setting, NHTSA adopted another "model year." By issuing more stringent standards (requiring 18 months lead time) on March 27, 1980, NHTSA indirectly established a starting date for the 1982 model year about October 1, 1981. This model year appears to be more closely related to the marketing period, rather than the production period, and it sets an industry-wide model year starting date, even though manufacturers' actual marketing periods differ. Despite this apparent conflict with the statutory definition, we cannot find that the October 1 date for the setting of standards is unreasonable.

The fact that NHTSA and EPA agreed to set a different model year for reporting indicates that the two cognizant regulators found considerable flexibility in the statutory definition. Also at the time the March 1980 regulation was published, there was no legal challenge to the October 1 starting date based on insufficient lead time. Moreover, an "autumn" date for the start of the model year is traditional and has been noted with approval in Center for Auto Safety v. NHTSA, 710 F.2d 842, 847 (D.C. Cir. 1983).

For the purpose of promulgating standards, it was necessary to choose one date as the start of the model year, despite individual manufacturers' different production and marketing practices. We see no problem with choosing October 1 because it is the longstanding sales practice to introduce new model cars in the fall of the year. Even those manufacturers whose model years actually start at other times would be aware of the prevailing industry practice.

Moreover, it is clear that any discrepancies between a particular manufacturer's actual production or marketing practices and the industry-wide model year for the purpose of setting standards can be accounted for when EPA calculates CAFE results using still a third model year concept. Applying the statutory definition, EPA would tailor the computation to each manufacturer's actual annual production of cars.

Conclusion

In summary, we think that there is sufficient flexibility in the statutory definition of the term "model year" to support NHTSA's position that mid-year amendments to CAFE standards are untimely under its industry-wide definition. We also think Ford's reliance on the statute's "maximum feasible" language is misplaced, and that the definition of a "model year" is not seriously in question.

We trust this opinion is useful to you. Unless agreed otherwise, it will be available to the public 30 days after issuance.

Sincerely yours,

Milton J. Socolar

Acting Comptroller General
of the United States

Mr. **Markey**. The gentleman's time has expired.

I would also like to note that the Auto Importers Association, representing every major European and Japanese manufacturer except Mercedes Benz, were invited to testify this morning, but their representative had a conflict and was unable to testify. But they were in fact invited, and their comments will be included in the record. [See p. 445.]

The Chair recognizes the gentleman from Utah, Mr. Nielson.

Mr. **Nielson**. I have no opening statement.

Mr. **Markey**. The Chair recognizes the gentleman from Texas.

Mr. **Bryant**. I have no opening statement.

Mr. **Markey**. The Chair recognizes the gentleman from Florida, Mr. Bilirakis.

Mr. **Bilirakis**. I have no opening statement.

Mr. **Markey**. Fine. That concludes opening statements by members of the subcommittee, and now we will turn to our first panel, which includes Members of the Congress that have an interest in this issue.

We are very fortunate this morning to have the Honorable Barbara Boxer from the State of California who has introduced legislation on this issue, and has a knowledgeable background on this subject, and we welcome you to this subcommittee, Congresswoman Boxer, and we would ask if you could begin your testimony.

STATEMENTS OF HON. BARBARA BOXER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA; HON. BOB CARR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN; AND HON. FORTNEY H. (PETE) STARK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mrs. **Boxer**. I thank you, Mr. Chairman.

First, I would like to associate myself with your opening remarks and commend you for holding this hearing now, and not waiting for a fuel crisis to do so.

I think we all know what this room will look like or could look like when there are long lines at the gas station and gas-guzzling cars are still in production.

I believe the CAFE standards have been a great incentive for automakers to improve fuel efficient technology, as well as for consumers to conserve precious fuel.

Passage of the Energy Policy and Conservation Act in 1975 set U.S. automakers on a steady and aggressive path to produce more fuel-efficient vehicles. CAFE standards have already saved this Nation 1.8 billion barrels of oil over the decade that they have been in effect. In addition, increased energy efficiency has done the most to lower world oil consumption during the past decade, exceeding the contribution of all new energy sources combined.

Clearly, there is no emergency now. Energy-efficient technologies, alternative energy sources, and new supplies of non-OPEC oil from Mexico and the North Sea have helped produce what some call an "oil glut" with an ensuing decline in oil prices. However, world oil reserves are likely to be largely depleted in the next century, and the world can ill afford to be complacent about energy trends.

I strongly oppose the petition that was filed on March 1, 1985, by GM and Ford to reduce the model year 1986 and subsequent years' corporate average fuel economy standard from 27.5 miles per gallon to 26. To put the proposed rollback into perspective, Mr. Chairman, in terms of U.S. oil production and energy use, the 4.7 million cars that GM produced in 1984, which fell short of the CAFE standard by 2.2 miles per gallon, will burn an extra 220 million gallons of fuel in the first year of driving alone. Over a 10-year lifetime of these cars, the fleet would consume more than 1.7 billion extra gallons of gas, and Ford's 1984 fleet could contribute another half billion wasted gallons of gas.

In contrast, Chrysler invested a record $4.8 billion to convert the overwhelming majority of its fleet to fuel-efficient cars. Its percentage of midsize and family cars is higher than Ford's, yet they will meet the CAFE standard of 27.5 miles per gallon and Ford won't. If every car on the road in America averaged 27.5 miles per gallon, the U.S. would save more than 20 billion gallons of gas each year, or about 4 months of imported oil at current import levels. With payments for imported petroleum of approximately $58 billion per year, it is clear that fuel efficiency in automobiles could do much to decrease the U.S. trade deficit. Transportation is the single largest user of oil in the United States, accounting for over 60 percent of the 15.8 million barrels per day consumption rate. Extensive conservation efforts directed at this sector can obviously render the most significant results.

Chrysler has demonstrated that the standard of 27.5 miles per gallon set in 1975 for 1985 model cars can be met. My legislation, H.R. 1024, coauthored by my Republican colleague, Claudine Schneider, which calls for a standard of 45 miles per gallon for cars by 1995, is also feasible. According to a report commissioned by Carter administration Under Secretary of Energy John Sawhill, fuel economies ranging from 58 to 98 miles per gallon are feasible by the year 2000. A 1982 Office of Technology Assessment study judged that 1995 fuel economies would range from 39 to 78 miles per gallon, even assuming no shift to a greater percentage of smaller car purchases.

H.R. 1024, the Automobile Fuel Economy Act, would gradually upgrade fuel economy standards to 45 miles per gallon by 1995 and light truck standards to 35 miles per gallon by 1995. In addition, the bill requires that tires be labeled to reflect fuel economy performance, and that the distribution of EPA mileage guides be improved. These standards are based on studies by OTA, the Princeton University Center for Energy and Environmental Studies, and Solar Energy Research Institute. They support the Carter administration report, which concluded that these standards are well within our technological and economic reach.

In a House hearing held last year on automobile fuel economy, Bob Williams of Princeton University estimated that increasing the standards for cars and light trucks to the level called for in my bill would save 2.2 million barrels of oil per day by the year 2010. Savings of that magnitude at a time when world oil supplies are certain to be much tighter will be a welcome achievement.

Many of you have raised the issue of employment. The employment implications of increasing fuel economy are as important as the energy implications. Our foreign competitors, the French, Germans, and Japanese, are pouring research into fuel efficiency; they know that future markets will demand it. During the energy shortage of the 1970's and early 1980's, fuel economy standards in place then saved the domestic auto industry from being totally unprepared to meet the consumer rush for efficient cars. To avert an even larger abandonment of domestic cars in favor of more fuel-efficient foreign cars, and a consequent layoff of domestic autoworkers, competitive standards should be in place. We should not wait for a crisis to motivate us.

And I believe that the bill that Ms. Schneider and I have submitted to you for your consideration and to the Congress, is really a jobs bill.

Encouraging an unsustainable level of oil dependence by rolling back automobile fuel efficiency standards would only invite another oil crisis and could undermine billions of dollars' worth of energy investments on which world security depends. Maintaining and, more importantly, improving CAFE standards is an important part of achieving U.S. energy goals of conserving a valuable, diminishing natural resource, while at the same time reducing U.S. vulnerability to foreign oil supply interruptions.

Again, Mr. Chairman, I strongly believe that the direction we should go is certainly not to rollback and to abandon this program, and I commend you very much for your interest in this particular issue.

Mr. MARKEY. Thank you. Thank you very much.

Our next congressional witness is Congressman Bob Carr from the State of Michigan, a long-time participant in and contributor to the debate and the construction of legislation surrounding this issue of fuel economy standards, with the entire automotive industry in general. It has been a specialty of his, and we welcome you to the committee, and we look forward to your testimony.

STATEMENT OF HON. BOB CARR

Mr. CARR. Thank you, Mr. Chairman.

I will not read my testimony. I will summarize it and ask that it be submitted for the record. Congressman Ron Marlenee hoped to be here today, but he was detained.

Mr. MARKEY. We will include your written statement in the record and welcome your comments to the subcommittee.

Mr. CARR. I welcome the hearing on the CAFE standards. I might point out that as a member of the Transportation Appropriations Subcommittee, which oversees the budgets of the National Highway Transportation Safety Administration, we too have had the same and similar interest in this particular item of discussion today.

Let me state up front that I support the reduction in the passenger car CAFE standard for the 1986 and subsequent model years, and oppose any efforts such as those of Ms. Boxer's bill to raise them.

Without such a change in lowering the standard, the two largest domestic auto manufacturers face the unfortunate prospect of having to restrict product offerings to achieve compliance with the

CAFE Program, and I think this would clearly adversely impact on the companies, their employees, in a district such as mine, Pontiac and Lansing, MI, plus the consumers who obtain the cars that they are obviously voting for with their dollars.

Fortunately, in 1975, when we were debating this particular issue, we provided some flexibility at the very top end for the 1985 model year CAFE requirement. That administrative flexibility is now being tested and requested by General Motors and Ford, and supported by Members of Congress, like myself and Congressman Marlenee.

We believe that setting out a goal is a wonderful thing. I believe we can claim that the 27.5 mile per gallon has achieved its incentive purpose, to get the automobile manufacturers 10 years ago to take a look at fuel efficiency very seriously.

On the other hand, back in 1975, it was very much evident in the debate that as we were looking out 10 years in the future, we really didn't know what the future held for us. We were making assumptions at that time that gasoline would reach $2.50 a gallon, and the assumption of 27.5 miles per gallon fleet average was heavily based on the forecast of the $2.50 per gallon gasoline charge.

Of course, that wasn't realized. Events didn't play out as forecast, and fortunately in 1975 we provided for some administrative flexibility to take into account current situations. I believe the current situation demands a reduction, not an increase in the CAFE standard.

The companies have dramatically moved to institute new technologies, have spent billions of dollars retooling and redesigning their automobiles. And I think it is fairly self-evident today that the fuel efficiency of today's automobiles, domestic automobiles in particular, is better than before.

Much has been said about the fact that Chrysler is the one large auto manufacturer in this country that is not asking for a reduction. I would submit to you that Chrysler is really a special case.

No. 1, Chrysler was the first to ask for a rollback in the CAFE standards as it applies to trucks, so their own administrative position changes with regard to how they see their own market needs.

But even more than that, Chrysler is really a special case and it's a special case for all of us in Congress in supporting the Chrysler loan guarantee, and who worked very hard to keep that corporation afloat. We all know that there were many conditions that were placed on Chrysler—some by banks and by the Congress, many by the administration—and among those was that they shed their large automobile production lines.

As a result of that gratuitous assistance from external forces and their own need for survival, the Chrysler Corp. finds itself in a position today that is much more akin to the Japanese manufacturers as they face the corporate average fuel efficiency standards.

I don't think that technology is a problem, and I don't think that lack of commitment is a problem. But the fact of the matter is, looking out 10 years in the future from 1975, we didn't see the world that hindsight gives us the ability to see today.

I think the case for energy conservation needs to be made. We all want to conserve on energy. It's very important for our national security, as well as our domestic market and our own domestic tranquility at the gas pump.

On the other hand, I don't think the case has been adequately made that just merely raising the statutory standards is in any way going to achieve the energy conservation that is projected for.

No. 1, it again involves forecasting in a very uncertain area of human consumer behavior. First and foremost, the consumer may choose to avoid the restrictions placed on them in terms of forcing a choice for small automobiles by going more and more toward trucks and vans. We see that happening today, and trucks and vans, as you know, have a larger and less fuel-efficient weight to them.

The consumer might also choose to hang onto older cars that are less fuel efficient.

And lastly, if the CAFE is not reduced or in fact increased, what you are really doing is giving a great advantage to the Japanese auto manufacturer who is desperately trying to increase the sale of large Japanese automobiles in the United States today, because they have been able to build up credits under the statute and under administrative guidelines handed out by Secretary of Transportation Brock Adams when he put this whole accounting procedure into effect. The Japanese are in a fortuitious situation of having large credits, and it means that U.S. consumers who want larger automobiles will be able to buy them nonetheless.

They will not be able to buy an American automobile, however, if these standards are not reduced. They will be able to buy large, less fuel-efficient automobiles made in Japan, further exacerbating our own trade balance, in addition to diminishing the effect of energy conservation.

I believe, though well intended and having some salutory effect on the problem, essentially what proposals such as the ones before the committee today are is an effort to regulate the consumer, not regulate the automobile industry. It is an effort to regulate the consumer by essentially putting the automobile industry in the middle, trying to make the automobile industry a rope in a tug of war between the Congress, trying to get people to buy small cars and conserve energy, and the consumers' reluctance to do so at a time when gasoline prices are a dollar, dollar and a quarter per gallon.

I would submit to you that really if you want to achieve what some of these bills propose, that the Congress would be better off enacting some kind of a tax to actually increase the price of gasoline at the pump, and put them more toward where we assume they would be when we passed this legislation in 1975.

Now I can understand Members of Congress being reluctant to go to their constituents and saying, "I am going to increase the price of your gasoline and double it." That doesn't make for a healthy reelection process.

So it is much easier to beat up on the automobile companies and, indeed, I wouldn't support a tax increase, either. But I do want to point out that's really what we're all about here. We're all about trying to get the consumer to buy more energy-efficient automobiles and to conserve fuel, and we are doing it by essentially putting the automobile companies in the middle. And I would hope this committee would not do so.

I would lastly make a point that you can't repeal the laws of physics, and while we can make some technological progress, I believe that the easy gain in the fuel efficiency area which has already been made, the physics demands essentially that fuel efficiency is first and foremost a function of weight.

Now I can fully understand why my good friend and colleague from Marin County, CA, might say that a small car is efficient. But if you will take some judicial notice, if you will, of the fact that I am 6 foot 4, a small car isn't going to make it for me, Barbara.

The fact of the matter is——

Mrs. **Boxer**. Will the gentleman yield to me just a moment?

Mr. **Carr**. In a moment.

Mrs. **Boxer**. It will lose its impact.

I was going to say that my coauthor, Claudine Schneider, is about 6 feet.

Mr. **Carr**. Well, looking at your lovely colleague, Claudine Schneider, I would tell you both that I just happen to weigh more than both of you combined.

Mrs. **Boxer**. I would agree with that.

Mr. **Carr**. And given that fuel efficiency is largely a function of weight, I would say that my genetic makeup makes me less fuel efficient than yours, in terms of the transport. That is something that I can't do very much about. And those of us who are tall and large don't like being discriminated against in the marketplace.

We may ultimately want a car that we can fit in, and we may ultimately want a car that can carry more than a wheel of Brie and a bottle of wine.

We may want to be able to carry things that may be transported a long distance, we may have large families. We do want a product selection, and I think that with all due respect and good-natured humor aside, I believe that we want to preserve the variety of choice in the marketplace.

I would ask this committee to oppose any effort to increase the CAFE standards, and indeed, if you can find it in your heart, you support some of us who are trying to get the National Highway Traffic Safety Administration to reduce it.

Thank you.

Mr. **Markey**. Thank you.

[The prepared statement of Mr. Carr follows:]

Statement of Congressman Bob Carr
at the House Subcommittee on Energy Conservation & Power
Hearing on Fuel Economy
(September 19, 1985)

Mr. Chairman, I am pleased to have the opportunity to appear today before the House Subcommittee on Energy Conservation and Power at this important inquiry into the status of the Corporate Average Fuel Economy (CAFE) program. I commend the Chairman for holding this hearing so we can examine the past effectiveness and potential future value of this program toward achieving its goals.

As we are all aware, the National Highway Traffic Safety Administration (NHTSA) currently has before it petitions to reduce the existing CAFE standard of 27.5 mpg down to 26.0 mpg for a few years. General Motors and Ford have filed these petitions and have been supported by a wide range of companies and organizations including the National Automobile Dealers Association, several recreational vehicle organizations and the Automobile Importers of America.

NHTSA has proposed a reduction in the CAFE standard to 26.0 mpg for the 1986 model year and has indicated that it plans to consider what steps to take regarding the 1987 and additional model years this fall.

This hearing is also intended to address the legislative proposals which have been introduced and currently await action in your subcommittee. These proposals are aimed at preventing any reduction in the CAFE standard, and in one case (H.R. 1024) would actually require a rather dramatic increase in the standards over the next ten years.

Let me state up front that I support a reduction in the passenger car CAFE standard for 1986 and additional model years. Without such a change, the two largest domestic automakers face the unfortunate prospect of having to restrict product offerings to achieve compliance with the CAFE program. Clearly this would adversely affect the companies, their employees, and the ability of consumers to obtain the cars which they need and want.

Fortunately, Congress wisely foresaw when it created the fuel economy program in 1975, that the projections of conditions for years into the future might not work out as expected. It was for this very reason that Congress provided NHTSA with the authority to adjust the standard slightly downward if conditions warranted. The spirit and intent of the law which created CAFE was that the standards should challenge the industry and force technology, but not be "so stringent as to threaten substantial economic hardship for the industry."

As we all know well, the projections made in 1975, and even as late as 1981, have not come to pass. Gasoline prices have not reached the $2.50 per gallon price forecast by many and gasoline supplies, expected by most experts to be extremely tight for years to come, are relatively abundant.

Taken together, the conditions which exist today have dramatically changed the market which automakers face. The companies spent billions of dollars to improve the competitiveness of their products and today the domestic companies offer a wide range of highly fuel efficient models for consumers to buy. The two largest domestic companies have contributed largely to a virtual doubling of the fuel economy of new cars sold in the marketplace today. But with all of this, the fleet average of GM and Ford is still moderately below the standard of 27.5 mpg.

Technology is not the problem. Lack of commitment is not the problem. The changed conditions in the marketplace, and consumer needs and desires as a result, have created the difficulty which these full-line manufacturers are having in meeting the standard. With gasoline prices near $1.00 per gallon, American consumers have less incentive to compromise their functional needs -- for comfort, towing capabilty, and carrying capacity. And with today's much more highly fuel-efficient family-size cars, it is hard to blame them.

Fortunately, curtailments of production and reductions in employment can be averted. All that is required is for DOT to reduce the fuel economy standard slightly -- from 27.5 mpg to 26.0 mpg -- for a few years. Equally fortunately, this step can be taken without any serious adverse impacts on energy conservation. The Departments of Energy and Commerce have estimated that the reduction required by Ford and GM would increase gasoline consumption at most by two tenths of one percent. This is indeed a small increase compared to the risks associated with keeping the standard where it is today.

In addition, a good case can be made that energy conservation will suffer if the target is not lowered. New car buyers, if faced with the reduced availability of domestic family-size cars, may instead switch to vans and light trucks, which frequently consume more fuel than full-size cars. Others may simply elect to retain their present, older cars and thus not obtain the advantage which a switch to even a new, full-size car would have provided to the country.

A third option, and one which certainly scares me as a Congressman from the largest auto manufacturing state in the country, is that consumers may look to foreign manufacturers to fill the void of full-size cars. Already, we are seeing more and more news about the interest of the Japanese companies to move into the larger car market. The Nissan Maxima and Toyota Cressida are examples of the kinds of cars which the Japanese are capable of providing. These cars do not get any better mileage than comparable U.S. vehicles, but the Japanese do not have a problem selling them and meeting the CAFE standard because they have concentrated in providing small cars in the past, and they have a comfortable bank of credits. The real question is, however, do we really want to use the CAFE program to disadvantage our own automakers by driving them out of the market segment where they traditionally have had a competitive edge, when the end result may not be any reduction in fuel consumption.

In summary, the automakers and the country have met the basic objectives of the law during the last ten years. The new car fleet average for all manufacturers now exceeds 26.0 mpg, and it will continue to rise. Further, the average fuel economy of all cars currently in service will continue to improve because the new cars today are so much more efficient than the ones they replace.

Presently, however, conditions in the marketplace are causing serious problems for the two domestic full-line auto companies. What is needed is a temporary adjustment in the standard to help them cope with the current situation while they take the steps necessary to exceed the standard in the future. Congress recognized that such a reduction might be in order. I cannot imagine a clearer case of an administrative agency carrying out the intent of the Congress.

For these reasons, I urge the subcommittee not to adopt any of the legislative measures currently before it. Unless NHTSA is clearly abusing the authority provided by Congress -- and I have seen no evidence that this is occurring -- I believe it would be unwise for Congress to now remove or unduly restrict NHTSA's flexibility to deal with changing circumstances. With regard to H.R. 1024, I believe the bill is at best extremely premature, and probably unnecessary. Under today's conditions, any attempt to force the automobile companies to comply with such an ambitious goal is very likely to result in severe economic disruptions.

It would be most unfortunate if existing rules based on quite different circumstances or new rules stemming from the pending legislation were used to needlessly restrict consumer freedom of choice and to cripple the two largest domestic automakers just as they are taking steps to make themselves more competitive with foreign manufacturers.

Thank you.

Mr. **Markey**. Our final congressional witness is the Congressman from the State of California, who has a great interest in this subject, and has put together, I think, a very good analysis and history of what this committee and this country should be doing with the economy fuel standards, and at this time I would like to recognize Congressman Pete Stark from the State of California.

STATEMENT OF HON. FORTNEY H. (PETE) STARK

Mr. **Stark**. Thank you, Mr. Chairman.

I am sure you have all had my statement, and you can read it silently far faster than I can repeat it to you, and with permission of the chairman, I would ask that my statement be made a part of the record, and that you bear with me for a minute or two while I try and summarize and expand on the statement.

Mr. **Markey**. Without objection, your statement will be included in the record.

Mr. **Stark**. If I can just make a few comments on the testimony that you have heard.

I was on the committee that wrote the act that now raises this issue. It was thought then to be good legislation, and it is thought to be good legislation now. And that committee has a long-standing feeling that retroactive legislation is unfair. So we'll just start out by saying that by lowering standards at this point, it just plain isn't fair, it is changing the rules, it is grossly and severely affecting those people who obeyed the rules, played by the law. People have had 10 years to see this coming, and all too often we see people who either ignore the law or think we can go back and lobby a change, and we'll take care of it that way.

So I think the first issue is, are we going to stick with the law and not go back and punish somebody retroactively?

Ford and General Motors, the richest corporations in this country, have more than enough assets and talent to make the changes and meet the requirements. The size of the automobile doesn't have one damned thing to do with fuel efficiency. You can buy fuel-efficient Volkswagen vans and four-cylinder vans, they're as big as a house.

Insofar as regulating the consumer, we've had to do that our entire legislative lives. I hate to suggest to you that the consumer may need a little nudging, but they wouldn't be wearing seatbelts if we hadn't originally legislated that seatbelts be in the car, and the same people who are bringing you consumer preference won't do a bloody thing to bring you airbags and other safety features unless we beat them over the head to do it.

I'm suggesting to you that the precedence is here to make the major auto companies step up to the bar and play fair, do what we know is good for the country. We know that there is a shortage of oil on the horizon, and we know most of it is burned on the highways. It's quite simple. Are you going to be fair, or are you going to stick it to Chrysler because they were the good guys, obeyed the rules, played by the rules, or are you going to give Ford and General Motors a windfall when they come whining, after paying relatively little income taxes to our country, making billions of dollars profits, buying all other kinds of institutions, financial institutions, high-technology institutions? They've got plenty to do with their money, and if they can't design a car that meets these standards, where foreign designers can manufacture them—and I might add that Chrysler outsells Ford and General Motors on family-sized products—if they can't do it, then maybe once in a while we ought to let them suffer around here and quit bailing out the richest companies at the 11th hour. Let's make them do what's right.

I'd be glad to answer any questions.

Mr. MARKEY. Thank you.

[The prepared statement of Mr. Stark follows:]

STATEMENT OF THE HONORABLE FORTNEY H. (PETE) STARK BEFORE THE SUBCOMMITTEE ON ENERGY AND CONSERVATION AND POWER HEARINGS ON AUTO FUEL EFFICIENCY STANDARDS

SEPTEMBER 18, 1985

MR. Chairman, as you and members of the committee know the CAFE standards were established in response to the Arab oil embargoes and the resulting energy crisis in the United States. They were primarily created for a better national energy conservation policy and to ease our dependence on foreign oil.

The law requires the National Highway and Traffic Safety Administration (NHTSA) to establish an average "maximum feasible" fuel economy level for all new car fleets sold in the United States. As we know manufacturers that fail to meet the standard are fined five dollars for each tenth of a mile they fall below the limit. The fine is multiplied by each car in the new car fleet. I recall this information that we are all too familiar with by now to highlight some crucial points.

We have come together today to discuss the pros and cons of the proposal to lower the standard from 27.5 to 26. I ask you, having established the reasons for creating the standard and then taking a look around at our current situation, has anything really changed?

We have not come so far that energy conservation is not an issue. Granted, American motorists find low prices today rather than long lines. But, how long will this trend last? Are lower prices due to U.S. energy independence? Have we kicked the foreign energy habit?

No way! Contrary to testimony a colleague of mine delivered to the Administration in early August we do not have a substantial Strategic Petroleum Reserve which could function adequately if needed. In fact the Strategic Petroleum Reserve, stands far short of its planned goal. And consider the following: Last year close to one third of our demand for liquid petroleum was met by foreign imports. This figure is projected to jump to 40% in the next four years. Furthermore, U.S. oil companies are cutting back sharply on exploration needed to assure future domestic supplies.

Quite obviously, the United States is still fearfully dependent on foreign oil. If the Lebanon hostage crisis reminds us of anything, it's the Middle East's volatility and our allies' and our own vulnerability to a cut off of some--or all--Mideast oil.

Earlier this year the Congressional Research Service at my request put together a report entitled, "Prospects of Non-Compliance with the Automobile Fuel Economy Standards." Among the many interesting facts and figures, the report also noted that retaining the CAFE standard at 27.5 could save as much as 22,000 barrels of oil daily. To roll it back compounds the entire Western Alliance's energy dependence on foreign oil and creates greater oil consumption. To roll back the CAFE standard goes against every reason for which it was created.

I understand that General Motors and Ford have petitioned for the rollback because they can't meet it and therefore face a 500 million dollar fine. It is not unfair to have GM and Ford pay their dues. All car manufacturers have had ten years' notice to get average fuel consumption up to 27.5 by now. Furthermore, it is both technologically and economically feasible to meet the law. Chrysler geared up to meet the standard and spent close to five billion dollars doing so. Moving the standard back puts Chrysler at a competitive disadvantage as well as says to business' "you may ignore the law, standards have no teeth, they can always be waived."

I am rather baffled by GM's and Ford's cry. Last year General Motors had its most profitable year ever with a net income of 8.2 billion dollars. GM made the claim that "things are looking so rosy we need a new business to invest in." Oddly enough, its aquisition strategy, "Star Trek" as it is called, targets, several non-auto areas of investment. Somehow GM has the resources to invest in electronics, defense, and financial services but they cannot invest in their own technology and meeting the law. GM is not alone, only a month ago Ford bought a financial institution. GM and Ford's list of non-auto related research and development is a long one. Somehow this doesn't jibe with their cry.

Let me make one more point. Just before the August recess we spent a good amount of time arguing back and forth over ways to trim the budget, and deal with our ever-increasing deficit. Proposals for spending freezes and cuts were discussed in many areas. If the Administration rolls back the standard it will cost the Federal Government half a billion dollars in federal revenue.

My colleague and friend the Honorable Bob Carr ended his testimony before the Administration this Summer by saying that if the CAFE standard was held at 27.5 GM and Ford would be crippled and that a large number of people would become unemployed. In light of GM and Ford's profits and their ability to put this money toward non-auto related investments I question this. And, just last week at a press conference the Executive Vice-President of Ford, Louis Ross admitted that Ford could meet the law at a loss of "a couple of hundred jobs" rather than the projected 100,000.

In March I introduced H.R. 1425, a bill which would eliminate the Administration's authority to lower the standard below 27.5 mpg. I believe that one of the roles of a good and wise government is to anticipate problems facing the nation and take steps to avoid or mitigate those problems. It takes about five years for the industry to put the technology of greater fuel efficiency into commercial applications. And, it is a fact that there is a finite amount of reasonably priced oil in the world; it is a fact that someday there will be a petroleum price crisis. To the extent a government can ensure its people are less dependent on oil, it can delay the day of the crisis and soften its blows. If we fail to use these years of energy calm to prepare for the future, our children will curse us for stupidity and neglect. Let's be wise for a change--let's prepare to meet the future--let's keep the mileage standard.

Mr. **Markey**. That concludes the testimony of the opening panel. Let me just ask a couple of questions, if I could.

What is your response to the contention that there will be a loss of jobs, that there will be a shift of production overseas, if we don't in fact relieve the auto manufacturers of this restriction? How do you respond to that?

Mrs. **Boxer**. Well, if I could respond—and I tried to address it in my testimony—I think if we really want to see a loss of jobs and a real tragedy in this country, it's to step back from the kind of fuel-economy standard we have set, and the next time we have an energy crisis, which every expert says will come some time—we don't know the exact moment in time—then we are going to see a real tragic problem with our automakers, because we are not going to be prepared to meet that demand.

So my answer to that is in the interest of jobs and the future of jobs in the auto industry, I think we'd better not abandon this program, because comes the day that people are running off to buy the foreign cars again in greater numbers, we are going to be in big trouble.

Mr. **Markey**. Mr. Stark.

Mr. **Stark**. Well, the revenue we will lose—we are talking about 100,000 jobs, if I'm right—we could probably just give each one of those employed people $5,000 or $10,000 and save money in the process. But the fact is, there won't be any loss of jobs. These are innovative companies. If they spent half as much time redesigning their product as they did lobbying this bill, we'd have new products running off the assembly line.

Look at what happened to Chrysler when they began to experiment. Companies tend to create the market through advertising and promotion, and they will create the market. They are mass marketing geniuses, and I am not worried for 1 minute—and certainly if I were trying to create jobs in this country, I would never put that program in the hands of General Motors' executives. I'll tell you how many jobs that will create over the long run.

With a little prodding from UAW, they may do what is right, but I would certainly not say that this program is a job loser or a job creator under any circumstances.

Mr. **Markey**. Mr. Carr, do you see any effects upon the loss of small car jobs in this country if we reduce the standard or eliminate it? And in the future, if there is another oil shock, are we in a position where we will be able to create the portion of the fleet which would have to be constructed as a response to an additional oil shock? And as a result of another oil shock, will jobs not be lost at that point as well?

Mr. **Carr**. Categorically, I don't think there would be a loss of small car jobs. And one of the things that gives me a pain about this whole discussion is what we have is comparing real jobs today with some fuzzy conjecture about what might happen with jobs in the future. And this Congress and all Congresses are notoriously poor at forecasting the future. We try. We need to try.

You're talking about 2,000 jobs in Pontiac, MI, today, and you can give me all the fuzzy forecasting about how these 2,000 people 10 years from now might have a job in a different time, in a different age, under different economic conditions. That isn't going to put bread on their table tomorrow at all.

And I would hope this committee would not engage in that kind of tradeoff, trading off today's present paycheck for some notion about what might be 10 years from now.

I would be very, very careful with people's lives in that regard.

Mr. MARKEY. Thank you.

My time has expired.

The gentleman from Utah.

Mr. NIELSON. Mr. Stark, you didn't say this in your presentation, but it's in your statement. It says if the administration rolls back the standard, it will cost the Federal Government half a billion dollars in Federal revenue. Would you please explain that?

Mr. STARK. That is the tax anticipated, if they continue to sell their present product, they can continue to sell them. They just have to pay so many dollars a unit in fines.

Mr. NIELSON. Half a billion dollars would be the fine?

Mr. STARK. Yes, if they kept the present policy.

Mr. NIELSON. Let me ask another question to Mrs. Boxer.

Mrs. Boxer, you have a statement that the midsize and family cars of Chrysler are higher than Ford's, and yet they are able to meet the standards and Ford will not. Would that same statement apply to General Motors?

Mrs. BOXER. I really don't have the answer for you, but I think they can answer it for you.

Mr. NIELSON. Mr. Carr, how do you respond to that?

Mr. CARR. I think you'd better get it from them. They will have witnesses here and you can ask them that.

Mr. NIELSON. Those are all the questions I have.

Mr. MARKEY. All right. Thank you.

Any other questions?

The gentleman from Alabama.

Mr. SHELBY. Thank you, Mr. Chairman.

Mrs. Boxer, what will happen immediately if we don't roll back the standard? What will happen to the people that Congressman Carr is interested in, and a lot of us are? I think some of us are interested in jobs, yet we are also interested and can see the long-term need of fuel-efficient cars, and you have got to strike a balance here.

The question is, do we go with this? Do we keep the 27.5 standard that was mandated? What is the real answer to the dilemma that has been posed?

Mrs. BOXER. First of all, I think Congressman Stark said it straight from the shoulder, that this was no great surprise, that this is the law. And, in fact, one of the three companies met that standard and did what was right, and if you talk to them—and I'm sure you will in this hearing—you are going to find out that the precedent and the word that goes out to them and to others is not very good, when the guy that does the right thing finds out that it wasn't really worth it.

Second, I think your question reflects the same comment that Congressman Carr made. I am very involved in the jobs issue and support domestic content and some other things here that are sup-posed to help us in our domestic programs. So I kind of resent the implication that I don't care about jobs.

Mr. **Shelby**. I didn't say that.

Mrs. **Boxer**. No; I was really referring to my colleague sitting to my right. The tall one.

Mr. **Carr**. Bob——

Mr. **Stark**. First time I've been called shorty in a long time.

Mrs. **Boxer**. I think his point about fuzzy conjecture is very interesting. We have a very recent history on what has happened, and we didn't see a fuzzy loss of jobs in the past when it came to this situation. We saw real abandonment of American cars, and a real loss of jobs. And the reason we saw it is we just weren't ready for the fuel crisis that we had, and for the needs of the consumers at that time.

In terms of what will happen at this very moment, I think you are going to have testimony as to that subject, which I am sure Mr. Carr would say is an accurate forecast, but which other people, such as Mr. Stark, would say that with a good promotion campaign there won't be a significant loss of jobs.

Mr. **Stark**. May I comment? If the gentleman would indulge me.

I would hope that when the Ford Motor Co. testifies, that you would ask them whether they still stand by the comment of their executive vice president who admitted last week in a press conference that Ford could meet the law with a loss of a couple hundred jobs.

Now I would not like to see even a couple hundred jobs lost. But I submit that that puts us into a whole different realm of employment figures than 100,000, and I hope they could better answer that than I.

Mr. **Shelby**. Congressman Carr?

Mr. **Carr**. I would just like to respond to something that both my colleagues have said, about somehow or other giving the impression that Ford and General Motors' application is somehow or other unhanded and sleazy, and not according to law.

I believe that my colleagues, if they really sincerely hold that view, that there is fundamental fairness and they knew what the law is and they ignored it, and all that, are really making a very selective reading of the law. Since its inception, the law has stated 27.5 miles per gallon CAFE with the proviso of an administrative readjustment downward to 26 miles per gallon.

That, too, is part of the law. Ford, Chrysler, GM, and everyone else knew that the day may come when the Administrator may look at the circumstance and see that it's just to reduce it. That, too, is the law. And, I think, those of us who represent those areas of the country similarly resent the implication that this is somehow sleazy or underhanded.

Mr. **Shelby**. One last comment. If Chrysler has met or is going to meet the 27.5 standard, is it because they are not a full line manufacturer in the sense of General Motors and Ford? Because they don't compete in every respect of manufacturing.

Mr. **Carr**. They would like to, and I believe would if they had the chance, and they probably would argue with saying that they are not a full line manufacturer, and I could understand their doing so. But I don't think fairly——

Mr. **Shelby**. But is there any correlation there since they don't manufacture every type of truck or car, and so forth?

Mr. **Carr**. They show their large automobile lines, it's part of their corporate survival strategy during the loan guarantee period.

Mr. **Shelby**. Thank you, Mr. Chairman.

Mr. **Markey**. The gentleman from Ohio, Mr. Oxley.

Mr. **Oxley**. Thank you.

Mr. Stark, I was struck by probably, more than anything, what I would consider at least some disregard for the American consumer in this entire process. Several times you commented "we know this and we know that," apparently meaning the Members of Congress who wrote the legislation.

Are you telling this committee that there is something magic about 27 miles per gallon or 26 miles per gallon, that indeed the Congress somehow understands this issue to the point that we should disregard the buying habits of the American public, Mr. Carr, myself, or anybody else?

Mr. **Stark**. First of all, Mr. Oxley, in response, when the law was written, it was written as a fuel conservation measure, so that quite clearly we were foisting upon the consumer a limit or attempting to change the consumer's buying habits to a more fuel-efficient automobile.

I'm not sure that is the major issue here this morning. But I believe that is a good area for us to legislate in, and we do that in some areas. And I think it often becomes necessary for us to limit the consumer's choice, either to achieve national goals or to protect the consumer in many cases from him or herself, in licensing drugs, and other sorts of things.

So I don't have any real worry. We are achieving what is sound national policy just like I believe conservation in utilities and encouraging people to insulate their homes is a good national policy, and we tend to use a variety of either tax incentives or penalties, to get people to do that.

So, one, I believe it's a good national goal to encourage fuel-efficient automobiles. We don't really say anything about size, color, upholstery, or any of that, or speed. We can have all of those things and still have fuel efficiency.

I am just suggesting we are trying to protect the consumer's interest and buying habits, I think, to a modest degree. I think that is a worthy goal.

Mr. **Oxley**. So that that goal indeed should override the desire of the American consumer to make his choice in the marketplace, taking into consideration the size of the automobile, the fuel efficiency, all of these things that apparently he has a lot more knowledge of today than he had before.

Mr. **Stark**. Mr. Oxley, I would bet you a nickel a letter that you haven't had many letters that weren't generated by the UAW or Ford or GM from your constituents asking you to lower the fuel efficiency standards. I know that I haven't had a one. I just don't think the public is out there screaming at us, saying, "Lower the fuel standards, I want to buy a gas-guzzler."

Mr. **Oxley**. The people are voting in the marketplace. They are not sending letters, they are making decisions on a day-to-day basis as to what they want to do and as to what they ought to do.

Mr. **Stark**. They're happy. They're happy.

Mr. **Oxley**. I'm not sure they are. Mr. Carr is not particularly happy.

Mr. **Stark**. Consumers are happy. They've got all kinds of choice out there. They've got red and green and two-toned.

Mr. **Oxley**. The last time I looked, a lot of those consumers held jobs in the auto industry, a lot of them in my district and in Mr. Carr's district, and I think it is somewhat disingenuous to talk about mandating certain things from the Federal Government, when at the same time we are talking about limiting consumers' choices on the one hand, and eliminating jobs on the other.

Mr. **Stark**. I doubt, Mr. Oxley, you've had any testimony that has said this is going to limit consumers' choices. It doesn't limit their choice at all. They may have to pay a little more if they want a 16,000-horsepower car, but I don't know anyone who wants one.

Mr. **Oxley**. So this won't limit the consumers' choices?

Mr. **Stark**. We pick the least desirable or the most desirable options, depending on the people we represent, but I don't think the consumers will suffer one bit. They are not suffering now, and what's to change for the consumer?

Mr. **Oxley**. What kind of car do you drive?

Mr. **Stark**. I drive several cars.

I drive a Mercedes, which meets the standard, and I drive a Chevrolet pickup truck, which doesn't meet the standard, and it's a matter of indifference to me what the fuel tax is on those cars. For other people, it may be, but I don't know as that is really an issue. My constituents drive, 50 percent of them, foreign cars, in many cases because they are lighter and more fuel efficient. That happens to account for their popularity in California.

Mr. **Carr**. I really have to vigorously disagree with my friend and colleague from California. Yes, the consumer is fairly happy today, because the automobile companies have had the flexibility of offering a wide product line. If we were to pass something like the Congresslady from California's bill and have 35 mile per gallon CAFE by 1990, I believe you would have a——

Mrs. **Boxer**. 1995.

Mr. **Carr** [continuing]. 1995, I believe you would have a serious restriction in consumer choice.

Now, Mr. Stark says that you can have these big wonderful things and get 60 miles per gallon, but they too probably will be made out of cardboard. Some people want fuel efficiency over automotive safety. If we were having this hearing today on automotive safety, and we weren't thinking about fuel efficiency, because we plucked one of the design parameters out and we're highlighting it today—but if we were to pluck out the safety standards, you know, from repeated safety tests that the foreign automobile manufacturers—the Japanese in particular—make an inferior car from a safety standpoint——

Mr. **Stark**. Will the gentleman yield for a point of clarification?

Mr. **Carr**. I will in a minute. I'll be glad to hear your rebuttal, but the fact of the matter is an automobile is a design compromise, and it is true what my colleague from California said, we have to mandate seat belts be put in the cars. Shame on the automobile companies. But I would also point out to you that part of the history is that one of the last times the Congress of the United States tried to design a car was with the seat belt interlock system which was a disaster.

We have to take into account what the consumer really wants to do and how they will behave, and I think in this country we want to give the consumer as much choice as possible.

Mr. **Stark**. In fairness, Mr. Oxley, you may have misunderstood, and my colleague from Michigan misunderstands, I suspect. I have a different bill from Mrs. Boxer's, and mine would not mandate any increase in the standards. Mine would freeze the standards where they are, and take away the Secretary's ability to adjust them downward. So that when I say there would be no change in product mix, the cars that are available today are available under the standards. Under Mrs. Boxer's bill, my answer to you might have been different, but there is a distinction between the bills that I think is important to make. And that's why I say there would be no change in the consumers' choice under my bill, because they would have the same choice they have now.

Mr. **Oxley**. Thank you.

Mrs. **Boxer**. If I might just make a quick comment here, I think what we have to not lose sight of is, that the CAFE standards are an average fuel economy standard. So you can have some automobiles that do extremely well and some that don't do that well. So there are choices. That's why the dire predictions were made when this was passed 10 years ago, it would limit, limit, limit choices, and we find it does not. And as we look at technology and if you really read the reports that have been made, both within the Government and from without, we find that with technology improvements the way they are going, we can gradually ease up, and that's why I am optimistic that we won't be faced with this lack of choices, that we will have our choices, and some good choices.

And again, one more point. My information is that domestic auto sales went down 50 percent over that period of time where we had the fuel problem, as consumers deserted the American auto market, and I think it's a mistake to see that happen again.

Mr. **Shelby** [presiding]. Thank you.

The gentleman from Texas.

Mr. **Bryant**. No questions.

Mr. **Shelby**. I have a couple of comments.

If this precedent were brought about and you rolled it back to 26, is that the right signal to send out there, especially in view of the fact that we could be getting ourselves into a trap down the road that would be parallel to what happened in 1973 and 1979, as far as the oil crisis and so forth? Bob.

Mr. **Carr**. I believe, if you look at all signals and add them up all up, that would get lost in the noise, if it was felt to be an adverse signal. I don't think it would be. We have a tradeoff in terms of our trade policy and our trade deficits that also has to be considered, and we would be sending a very fine signal in terms of our trade problem.

Mr. **Shelby**. Mrs. Boxer.

Mrs. **Boxer**. I think it would be the wrong signal.

Mr. **Nielson**. Mr. Chairman, I have a question.

It was mentioned by Representative Carr in his statement that Chrysler had come to ask for a modification on the light trucks a few years ago. What was your attitude when they came and asked for relief on that standard?

Mr. **Stark**. I would oppose that. This bill was written, Mr. Nielson, with the acquiescence and cooperation of all the auto manufacturers when we wrote it, and there was a great deal of turmoil at that point.

Mr. **Nielson**. You think we made a mistake, when we granted that relief?

Mr. **Stark**. I think so. This was a deal cut among the companies, and it was a compromise they agreed to, they said they could live with, and I think you have to administer these laws fairly and evenhandedly. I am not familiar with the remedy they sought, but I think it should be applied consistently.

Mr. **Nielson**. I'm not trying to imply that two wrongs make a right, but I'm saying is Chrysler's attitude today somewhat different than it was a couple of years ago?

Mr. **Stark**. I don't know. I make no brief, really, for Chrysler. I do suggest that all manufacturers—there is American Motors——

Mr. **Nielson**. You said they were the good guys and the others are the bad guys.

Mr. **Stark**. In this particular instance, I think so. I happened to oppose their loan. I thought they were the bad guys then, and when they tried to gyp us out of our preferred stock, I thought they were the bad guys then. So you may think they're the bad guys if Iacocca becomes the Democratic candidate.

But the point is that in the rules it is retroactivity. We are going back and changing some rules that actually in this case they all agreed to.

Mr. **Nielson**. I think all three are good guys. It was an accommodation that helped them with their financial problems. I think perhaps today it may be a problem with Ford and General Motors. I don't think it's a financial problem, but I do think it is a problem in terms of their wanting to appeal to what people want, and there is a return to bigger cars, and they would have to basically change their product marketing entirely. It would cause a lot of problems, a lot of jobs, if they did that.

Mr. **Stark**. Mr. Nielson, sir, they also wanted to make cheap bumpers that would be more expensive to repair, and they also wanted not to do airbags. They wanted to do a lot of things that we were inclined to protect the consumer from.

So I think that the better part of valor would say we are on the side of fuel efficiency.

Mr. **Nielson**. You have answered my question as to who are the good guys and who are the bad guys. Apparently it is within the timeframe that we are looking at.

Mr. **Shelby**. The Chair recognizes Mr. Dingell.

Mr. **Dingell**. I remember a fellow by the name of Baron Munchhausen. Maybe my old friend Mr. Stark remembers that same fellow. He used to be on the radio late at night when I was a very small boy, and he always used to say, "Vas you dere, Charlie?"

He used to tell these enormously outrageous stories which were always duly doubted by one of his sidekicks whose name was Charlie, and then Munchhausen would just say, "Vas you dere, Charlie?"

And with all respect to my very special friend, Mr. Stark, you made some comments about how the companies all agreed to this proposal. I was intimately involved in the negotiations, and my question to you is, were you there in the negotiations?

Mr. STARK. As I recall, if you were intimately involved in the negotiations, Mr. Rostenkowski is right, you are treading too much on the jurisdiction of the Ways and Means Committee. And yes, I was there.

Mr. DINGELL. Are you talking about the CAFE or the gas-guzzler tax? We are talking about CAFE here at this point. They are, believe me, different.

Mr. STARK. I understand that.

Mr. DINGELL. And I was rather intimately involved in negotiations that went on at the time I was chairman of the subcommittee, and I remember enthusiasm on the part of the labor; but I remember only one company, Ford, agreed to this.

Is your recollection different?

Mr. STARK. My recollection is that they all agreed to the compromise.

Mr. DINGELL. I have to respectfully inform you that you are in error.

You were talking about changing the rules, and I looked at the statute while you were talking, because I thought it was important. The appropriate language is the Secretary—and this is average fuel economy standards applicable to each manufacturer. The Secretary may, by rule, amend the average fuel economy standard specified in paragraph 1 for model year 1985 and for any subsequent year to a level which he determines is the maximum feasible average fuel economy level, except that any amendment which has the effect of increasing an average fuel economy standard to a level in excess of 27.5 miles per gallon, or decreasing any such standard below the level of 26 miles per gallon, shall be submitted to the Congress in accordance with section 551 of the Energy Policy and Conservation Act and shall not take effect if either House of Congress disapproves such amendment, in accordance with procedures specified in that section.

Now obviously the last part fails because of the *Chada* decision. But the language here says that the Secretary has, as of model year 1985, the authority to deal with the issues of fixing the standard.

It also provides a number of tests which the Secretary shall meet, one of which is economic feasibility or economic practicability, in the language of the statute.

Are you aware of that?

Mr. STARK. Yes.

Mr. DINGELL. How then is dealing with this issue through appropriate rulemaking in the department a changing of the rules?

Mr. STARK. The change in the rules, if the distinguished chairman of the full committee will indulge me, is a change in the direction of the intent of Congress to increase fuel efficiency and encourage the manufacture of more fuel-efficient automobiles.

Mr. **Dingell**. No, the intent of the Congress, as expressed there, was that the Secretary should, in 1985, have the authority to deal with this on a number of bases, including the question of economic practicability. It wasn't——

Mr. **Stark**. I know the gentleman is an expert on gun control. As to economics, I think he may fail on that exam, and I would suggest——

Mr. **Dingell**. I'm not discussing economics.

Mr. **Stark**. You're not discussing much of anything. But what I would suggest to the chairman is that the aim of Congress was to get fuel-efficient automobiles, and we gave the Secretary some flexibility which the Chairman doesn't understand.

Mr. **Dingell**. I understand flexibility. As a matter of fact, I wrote the section which would tend to give a certain credibility to my interpretation. I'm not challenging your wisdom and I'm not bringing your views on gun control into this issue, Mr. Stark, and I would think that as a witness before the committee, you would direct your attention to issues which might be before the committee, and not the question of gun control. And I would think that directing your attention to the matters of the question, that in view of your long experience in this establishment, that you would direct your response to the purpose of the question, and not to matters that are entirely irrelevant.

Thank you, Mr. Chairman. I think the answer was rather unhelpful, but perhaps useful.

Mr. **Markey**. The gentleman from Ohio, do you have any questions?

Mr. **Eckart**. I have no questions.

Mr. **Markey**. That concludes our opening panel. We thank you very much for the presentations. They have been very, very helpful to us.

We now will move on to our next panel, which is a panel of one, the Honorable Diane Steed, who is the Administrator for the National Highway Traffic Safety Administration.

STATEMENT OF DIANE K. STEED, ADMINISTRATOR, NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION; ACCOMPANIED BY JEFF MILLER, CHIEF COUNSEL, AND BARRY FELRICE, ASSOCIATE ADMINISTRATOR

Ms. **Steed**. Thank you.

Mr. **Markey**. If you have testimony, we would appreciate it. If you can, as much as possible, keep it down to 5 or 6 minutes, so that we would be able to get this hearing over sometime today, and we will be able to get as quickly as possible to questions from the subcommittee members.

So, if you would commence.

Ms. **Steed**. Thank you, Mr. Chairman.

I am pleased to be here today to discuss the automotive fuel economy program. I would like to give a brief overview of our fuel economy program, talk a little bit about the current rulemaking and other issues, and answer any questions that you have.

I would, for the record, like to introduce my colleagues. To my left is my chief counsel, Mr. Jeff Miller. To my right is Associate Administrator for rulemaking, Mr. Barry Felrice.

In the Energy Policy and Conservation Act of 1975, Congress enacted a variety of measures to conserve energy, including the establishment of fuel economy requirements for passenger cars and light trucks. For cars, the act directed each auto manufacturer to achieve progressively higher corporate average fuel economy—CAFE—levels, beginning at 18 miles per gallon in model year 1978 and increasing to 27.5 miles per gallon in model year 1985 and thereafter.

The Secretary of Transportation was given administrative authority to determine the intermediate levels in model years 1981 through 1984, and to adjust the standard from 27.5 for model year 1985 and beyond.

In setting fuel economy standards for both passenger cars and light trucks, the act requires us to determine the "maximum feasible average fuel economy level" for the model year to which the standard applies. The act establishes civil penalties for failure to meet the applicable CAFE standards, but also permits manufacturers to offset these penalties with accumulated credits or estimated future credits for exceeding such standards.

NHTSA established fuel economy levels for 1981-84 in 1977, leading to a standard of 27.5 miles per gallon for model year 1985 and thereafter. Through model year 1982, the strong market demand for fuel-efficient cars enabled the manufacturers to increase fuel economy very rapidly, and to exceed the required CAFE levels for those intermediate years. By model year 1983, some manufacturers began to fall below the standards, as declining fuel prices lessened consumers' interest in the most fuel-efficient cars.

Nevertheless, the auto manufacturers have steadily incorporated new fuel-saving technology into their cars. They have reduced vehicle weight dramatically by downsizing and materials substitution, and made great improvements in efficiency through better transmissions, better aerodynamics, electronic engine controls, and other measures. Even the least efficient of the new domestic cars is more fuel-efficient than the so-called economy cars of 15 years ago.

Although the demand for fuel efficiency has abated to some extent recently, the CAFE levels actually achieved by the domestic manufacturers have nonetheless continued to increase. The CAFE levels for the domestic fleet rose from 24.6 miles per gallon in model year 1983 to 25.6 miles per gallon in 1984, and an estimated 26.1 miles per gallon in 1985.

This contrasts with an estimated CAFE achievement level of approximately 15 miles per gallon for the domestic fleet in model year 1975, when the act was passed. We expect that the rate of increase will continue to be determined by the factors of new technology and consumer demand. Consumer demand is to a large extent outside the control of the manufacturers, although they may influence demand through their marketing and pricing strategies to some extent. A shift in market demand away from fuel-efficient cars could cause the average fuel economy levels to rise less rapidly or even to decline. Such a shift could offset the fuel economy gains from improved technology.

It is the administration's belief that free market factors will, over the long run, determine the levels of fuel economy. The laws of supply and demand, and free market pricing, will balance the desire of the motoring public for fuel efficiency, on the one hand, and for product attributes, such as performance, durability, handling, and comfort, on the other. With the decontrol of oil prices, today's oil market is demand responsive, unlike the controlled market of the mid-1970's when the act was passed. We have, therefore, opposed efforts to set higher CAFE standards by statute.

Passenger car CAFE levels as high as 45 miles per gallon have been proposed for the 1990's in some bills. We are not aware of any evidence to support the feasibility of these levels when economic practicability is taken into consideration.

Regardless of feasibility, however, the result of such legislation would be to restrict the types of vehicles available to American consumers, thus denying them the larger vehicles which they may need for carrying large families or for towing trailers. It could also reduce the levels of sales, investment and employment in the domestic auto industry.

The question of whether adjustments should be made in CAFE levels is also presented by administrative petitions for rulemaking that we have received from some manufacturers who claim now that even 27.5 miles per gallon is not feasible.

I would like to turn briefly to discuss a few of the issues in the current rulemaking.

First, I should emphasize that our current rulemaking deliberations are governed by the criteria spelled out in the act. The Department is directed to set "maximum feasible average fuel economy levels," taking into account several criteria, such as technological feasibility, economic practicability, the effect of other Federal motor vehicle standards on fuel economy, and energy conservation needs.

In late 1984 and early 1985, we granted three petitions for rulemaking to amend the fuel economy standards for passenger cars. The first of these, filed by the Center for Auto Safety, seeks an increase in the standard to 31.5 miles per gallon for model year 1987, with subsequent increases of 3 miles per gallon per year up to 40.5 miles per gallon by model year 1990. The other two petitions, one filed by General Motors and one by Ford, request a reduction in the standard for model year 1986 and beyond, to 26 miles per gallon.

Both GM and Ford cited the possibility of severe economic harm if the standards are not lowered.

The closeness of the 1986 model year led us to consider rulemaking for that year first. On the basis of our analysis and in light of the four statutory criteria, we tentatively concluded that the maximum feasible average fuel economy for model year 1986 is 26 miles per gallon.

Our analysis indicated that GM and Ford, representing a substantial part of the domestic industry, had made substantial good faith efforts to meet the 27.5 miles per gallon standard, but that those efforts had been overtaken by events beyond their control, such as declining gasoline prices and increased consumer demand for larger cars.

We also tentatively concluded that a 27.5 miles per gallon standard for model year 1986 could have serious adverse consequences, such as job losses and restrictions on consumer choice. Accordingly, we published a notice on July 22, which proposed to revise the fuel economy standard for model year 1986 to 26 miles per gallon. The comment period closed on August 21, and we are now reviewing the comments to that notice.

Because we are in rulemaking, we cannot respond to comments on the proposal until we make and publish a final decision. There are strong views, as you know, Mr. Chairman, on both sides of the issue. Regardless of our final decision, the issues raised in the rulemaking need to be answered carefully. We intend to move quickly to complete this rulemaking action, and to issue a proposal concerning the standards for subsequent model years.

We are also involved in rulemaking for light truck fuel economy. We have outstanding a notice of proposed rulemaking to set standards for model year 1987, on which we plan to take final action shortly. We plan to issue a notice of rulemaking to set light truck standards for model year 1988 and possibly for subsequent model years in the near future.

We are also, as you probably know, in litigation over CAFE standards. These two suits involve the light truck standard, and the details of those suits are in my statement.

That, Mr. Chairman, completes my prepared remarks, and my colleagues and I would be happy to try and answer any questions that you have.

[Testimony resumes on p. 242.]

[The prepared statement and responses to subcommittee questions of Ms. Steed follow:]

STATEMENT OF DIANE K. STEED
ADMINISTRATOR, NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION,
U.S. DEPARTMENT OF TRANSPORTATION
BEFORE THE SUBCOMMITTEE ON ENERGY CONSERVATION AND POWER OF THE
HOUSE COMMITTEE ON ENERGY AND COMMERCE ON THE AUTOMOTIVE FUEL ECONOMY PROGRAM

September 19, 1985

Mr. Chairman and Members of the Subcommittee:

I am pleased to appear before you today to discuss the automotive fuel economy program. I will give you a brief overview of the fuel economy program, review the status of current rulemaking and litigation issues, and then invite any questions you might have.

THE FUEL ECONOMY PROGRAM

In the aftermath of the Arab oil embargo of 1973-1974 that led to gasoline shortages, Congress determined that statutory measures were necessary to conserve energy supplies. In the Energy Policy and Conservation Act of 1975, Congress enacted a variety of measures to conserve energy, including a new Title V in the Motor Vehicle Information and Cost Savings Act to establish fuel economy requirements for passenger cars and light trucks. For passenger cars, the Act directed each auto manufacturer to achieve progressively higher corporate average fuel economy (CAFE) levels, beginning at 18 miles per gallon in model year 1978 and increasing to 27.5 miles per gallon in model year 1985 and thereafter. The Secretary of Transportation was given administrative authority to determine the intermediate levels in model years 1981-1984, and to adjust the standard from 27.5 for model year 1985 and beyond, if necessary. The Act also required the Secretary to set separate fuel economy standards for light trucks each year. These responsibilities have been delegated to the National Highway Traffic Safety Administration (NHTSA).

In setting fuel economy standards for both passenger cars and light trucks, the Act requires us to determine the "maximum feasible average fuel economy level" for the model year to which the standard applies. The Act establishes civil penalties for failures to meet applicable CAFE standards, but also permits manufacturers to offset these penalties with accumulated past credits or estimated future credits for exceeding such standards.

NHTSA established intermediate fuel economy levels for 1981-1984 in 1977, leading to a standard of 27.5 mpg for model year 1985 and thereafter. Through model year 1982, the strong market demand for fuel-efficient cars enabled the manufacturers to increase fuel economy rapidly and to exceed the required CAFE levels for those intermediate years. By model year 1983, some manufacturers began to fall below the standards, as declining fuel prices lessened consumers' interest in the most efficient cars. Nevertheless, the auto manufacturers have steadily incorporated new fuel-saving technology into their vehicles. They have reduced vehicle weight dramatically by downsizing and materials substitution, and have made great improvements in efficiency through better transmissions, better aerodynamics, and electronic engine controls. Even the least efficient of the new domestic cars is more fuel-efficient than many of the so-called economy cars of 15 years ago.

Although the demand for increased fuel efficiency has abated to some extent in the last few years, the CAFE levels actually achieved by the domestic manufacturers have nonetheless continued to increase. The CAFE levels for the domestic fleet rose from 24.2 mpg in model year 1983 to estimates of 25.5 mpg in 1984 and an estimated 25.7 mpg in 1985. This contrasts with an estimated CAFE achievement level of approximately 15 mpg in model year 1975, when the Act was passed. We expect that the rate of increase will continue to be determined by the factors of new technology and consumer demand. Consumer demand is to a large extent outside the control of the manufacturers, although the manufacturers may, to some extent, influence demand through their marketing and pricing strategies. A shift in market demand away from fuel efficient cars could cause the average fuel economy levels to rise less rapidly or even decline. Such a shift could offset the fuel economy gains from improved technology.

It is the Administration's belief that free market factors will determine the levels of fuel economy over the long run. The laws of supply and demand, and free market pricing, will balance the desire of the motoring public for fuel efficiency, on the one hand, and for product attributes such as performance, durability, handling, and comfort, on the other. With the decontrol of oil prices, today's oil market is demand responsive, unlike the controlled market of the mid-1970's when the Act was passed. We have, therefore, opposed efforts to set higher CAFE standards by statute. Passenger car CAFE levels as high as 45 mpg have been proposed for the 1990's in some bills. We are not aware of any evidence to support the feasibility of these levels when economic practicability is considered. Regardless of feasibility, however, the result of such legislation would be to restrict the types of vehicles available to American consumers, thus denying them the larger vehicles which they may need for carrying large families or for towing trailers. It could also reduce the levels of sales, investment and employment in the domestic auto industry.

The question of whether adjustments should be made in CAFE levels is also presented by administrative petitions for rulemaking that we have received from some manufacturers who claim that even 27.5 mpg is not feasible. I want to turn now to discuss our current rulemaking activities.

CURRENT RULEMAKING

First, I should emphasize that our rulemaking deliberations are governed by the criteria spelled out in the Act. The Department is required to establish "maximum feasible average fuel economy levels," which are to be determined on the basis of specified criteria: technological feasibility, economic practicability, the effect of other Federal motor vehicle standards on fuel economy, and energy conservation needs.

In late 1984 and early 1985 we granted three petitions for rulemaking to amend the fuel economy standards for passenger cars. The first of these petitions, filed by the Center for Auto Safety, seeks an increase in the standard to 31.5 mpg for model year 1987, with subsequent increases of 3 mpg per year to 40.5 mpg by model year 1990. The other two petitions, filed by General Motors and Ford, request a reduction in the standard for model year 1986 and beyond to 26 mpg. Both General Motors and Ford cited the possibility of severe economic harm if the standards are not lowered.

The closeness of the 1986 model year led us to consider rulemaking for that year first. On the basis of our analysis and in light of the four statutory criteria, we tentatively concluded that the maximum feasible average fuel economy for model year 1986 is 26.0 mpg. Our analysis indicated that GM and Ford, representing a substantial part of the industry, had made substantial good-faith efforts to meet the 27.5 mpg standard, but that those efforts had been overtaken by events beyond their control, such as declining gasoline prices and increased consumer demand for larger cars. We also tentatively concluded that a 27.5 mpg standard for model year 1986 could have serious adverse consequences, such as job losses and restrictions on consumer choice. Accordingly, we published a notice on July 22 which proposed to revise the fuel economy standard for model year 1986 to 26.0 mpg. The comment period closed on August 21. We are now reviewing the comments to that notice.

Because we are in rulemaking, we cannot respond to comments on the proposal until we make and publish a final decision. There are strong views on both sides of the issue. Regardless of our final decision, the issues raised in the rulemaking need to be answered carefully. We intend to move quickly to complete this rulemaking action, and to issue a proposal concerning the standards for subsequent model years.

We are also involved in rulemaking for light truck fuel economy. We have outstanding a notice of proposed rulemaking to set standards for model year 1987 on which we plan to issue a final rule shortly. We also plan shortly to issue a notice of proposed rulemaking to set light truck standards for model year 1988, and possibly for subsequent model years.

On October 16, 1984, the agency issued a final rule revising the light truck CAFE standard from 21.0 mpg to 19.5 mpg for model year 1985 and establishing a standard of 20 mpg for model year 1986. We denied petitions for reconsideration of these standards on March 15, 1985. Several organizations have challenged these standards in the U.S. Court of Appeals for the District of Columbia Circuit. They seek a court order reinstating the previous standards for model year 1985 light trucks and requiring the agency to set the model year 1986 standards at that level or a higher level. The agency believes that its action was fully in accord with the statute and well justified by the record. The briefing on the case is now complete, with oral argument expected to be held in the late fall.

In a separate action in the Court of Appeals, the same organizations have filed a petition for an order requiring the prompt issuance of a light truck standard for model year 1987, the promulgation of standards for future model years at least 18 months before the start of each model year, and the promulgation of any amendments before the start of the model year to which they apply. As I previously indicated, we plan to issue our final rule for model year 1987 shortly. The schedule for briefing and argument of this case is the same as for the litigation concerning the model year 1985 and 1986 light truck standard.

Mr. Chairman, this completes my prepared remarks. I would be glad to try to answer any questions you may have.

Question 1: The Department's recent Notice of Proposed Rulemaking (NPRM), "Proposed Automobile Average Fuel Economy Standards, Model Year 1986," states that the maximum feasible average fuel economy level for Model Year (MY) 1986 is 26.0 miles per gallon (mpg). This figure appears to be determined by the capability of one manufacturer, General Motors (GM), as reflected by the statement, "the agency believes it has a responsibility to set standards at a level that can be achieved by such a major manufacturer [GM]."

(a) Does this analysis mean that "maximum feasible average fuel economy level" is now defined by the capability or inability of one manufacturer?

(b) Does the fact that GM alone could not meet a standard of 26.3 mpg mean that such a standard is *per se* above the maximum feasible average fuel economy level?

(c) Would the Department consider setting a standard which appears to be beyond the reach of a single manufacturer?

(d) Conversely, why does not the ability of another major manufacturer, Chrysler, to meet a 27.5 mpg standard, prove that such a standard is feasible?

Answer: In proposing 26.0 mpg as the maximum feasible average fuel economy level for MY 1986, we took industry-wide considerations into account, not just the capability of a single manufacturer. The 26.0 level was requested by Ford as well as GM, which together account for more than 60 per cent of passenger car sales in the U.S. Given their substantial share of sales, and their good-faith efforts to achieve the current 27.5 mpg standard, we tentatively concluded that a standard set above their capabilities would be higher than the maximum feasible average fuel economy level for the industry. As we note in the NPRM, our proposal does not rely solely on the capability of General Motors. Ford's projected CAFE level for 1986, although nominally above 26.0 mpg, allows little margin for technological and market risks. We tentatively concluded that 26.0 mpg is the appropriate level for both of these major manufacturers, and we are now in the process of evaluating the comments submitted in response to our proposal.

This does not mean that we could not set a standard beyond the reach of a single manufacturer. As we note in the NPRM, the 26.0 mpg level would not be met by Jaguar, Mercedes-Benz, and possibly Saab. Setting a standard below 26.0 mpg at the level of the least capable European manufacturer would not be consistent with the statutory intent to set the standard at the "maximum feasible" level for the industry as a whole. Conversely, the ability of a single manufacturer such as Chrysler to meet a higher standard does not necessarily establish that standard as the maximum feasible average fuel economy level on an industry-wide basis, particularly because Chrysler does not manufacture vehicles in all categories offered by Ford and GM. The standard is not necessarily determined by either the least capable or the most capable manufacturer.

Question 2(a): In NHTSA staff opinion, did GM and Ford adopt the necessary fuel-efficient technology quickly enough to conform with the 1985 and 1986 CAFE standard of 27.5 mpg?

Answer: As described in the agency's Preliminary Regulatory Impact Analysis (PRIA) — Amendment of 1986 Passenger Car Average Fuel Economy Standard — we believed that Ford and GM had made sufficient improvements in fuel efficient technology not only to achieve but also to exceed the 27.5 mpg standard. Chapter III of the PRIA discusses this issue in detail and is enclosed.

Question 2(b): Have GM and Ford phased out low-efficiency models, according to the plans they have filed with the Department since 1977, or did these car manufacturers choose to retain these low-efficiency models beyond their planned retirement?

Answer: It is important to bear in mind that manufacturers are not required to supply the agency with a "plan," which shows their means of compliance with CAFE standards, nor are they under any obligation to adhere to those product plans they choose to share with the agency.

The auto companies are continually refining and altering their product plans, i.e., new model introductions, engine/transmission offerings, and other alterations, in response to many factors other than the CAFE standards, including such factors as market conditions, competitors' offerings, corporate financial conditions, production start-up difficulties, and certification/durability testing results. In response to proposed rules, questionnaires, and of their own volition, manufacturers have supplied numerous "plans" to the agency over the years, all of which have been altered in some respects. Since these plans are always in a state of flux, there is no single "planned retirement" date for deletion of certain car models.

Question: 4. In examining NHTSA's 1977 Rulemaking Support Paper projections, are there any areas where the car companies fall short of the agency's projections? Please pay particular attention to the areas of vehicle weight, engine size and transmission type.

Answer: The agency has analyzed differences between its estimates of MY 1985 capabilities for GM, Ford, and Chrysler vs. those companies' actual achievements. This analysis is contained in pages III-40 through III-66 of the PRIA, which is enclosed with this answer.

The agency's 1977 Rulemaking Support Paper (RSP) identified one possible path manufacturers could take to achieve 27.5 mpg by MY 1985. The companies were, of course, free to choose a different path, and they all did so. As the analysis shows, the companies exceeded the targets in the RSP in some areas but fell short in others, illustrating the different paths they took.

Question 5: The Notice of Proposed Rulemaking states that "MY 1985 projections provided by the manufacturers during the summer of 1983 indicate that they recognized at that time they would not be able to achieve 27.5 mpg CAFE for MY1985, although they apparently believed they would have sufficient carryforward and carryback credits available to avoid noncompliance with the Cost Savings Act." The NPRM later states that "the manufacturer projections in recent years indicate that they believed they would still comply with the law for model years 1985 and 1986" but later submissions "indicate that they did not recognize a CAFE compliance problem until approximately the time they submitted their petitions [March, 1985]." If GM and Ford knew in 1983 that they were going to miss the 1985 standard, how could NHTSA then conclude that it took these companies until March, 1985 to realize that they would fail to meet the 1986 standard? In addition, explain when the Department first realized or suspected that GM and/or Ford would not meet the MY 1986 CAFE standard.

Answer: The information available to the agency suggests that while the manufacturers had known since late 1983 that they would not meet the standard in MY 1985, they had continued to expect that they would have sufficient carryback credits to cover the MY 1985 shortfall. Ford indicated as late as June 1984 (in its MY 1984 carryback plan) that it expected to exceed 27.5 mpg in MY 1986 and thereby earn credits in that year. Not until December 1984, in its MY 1985 carryback plan, did Ford indicate to the agency that it would fall short of 27.5 mpg in MY 1986. GM had advised the agency earlier, in September 1983, that it would be unable to meet 27.5 mpg in MY 1986, projecting a level of 27.4 mpg for that year (including the GM/Toyota joint venture car but not the EPA test procedure adjustment credit), but the company continued to state that it would earn sufficient carryback credits to cover MY 1984 and MY 1985.

Although the size of Ford and GM's projected 1985 shortfall increased the difficulty of earning sufficient carryback credits, particularly if the companies were to fall short of the standard in MY 1986, the Department did not receive information about their projected carryback shortfalls until the March 1985 petitions. No filing by the manufacturers before that time had disclosed the difficulty, so that the official record before the agency as late as March indicated that they expected to earn sufficient carryback credits without an adjustment in the MY 1986 standard. We believe that the discussion in the NPRM accurately relects this sequence of events.

Question 7: The NPRM to amend the MY 1986 CAFE standard is issued pursuant to Section 502(a)(4) of the Motor Vehicle Information and Cost Savings Act. That paragraph stipulates that the Secretary has authority to amend the CAFE standard down to 26.0 mpg. However, the latter part of this same paragraph directs that any proposed change below 26.0 mpg or above 27.5 mpg "shall be submitted to the Congress in accordance with Section 551 of the Energy Conservation and Policy Act, and shall not take effect if either House of Congress disapproves such amendment in accordance with the procedures specified in such section." Please comment on the applicability of this language, in light of the Chadha decision, and how this decision affects the entire paragraph. Please provide all legal analyses performed within the Department which address this issue.

Answer: It is our view that the provision you quote from Section 502(a)(4) is invalid under the rule in Chadha, but that the provision is severable from the provision in that section permitting the Secretary to amend the CAFE standards to levels above 27.5 mpg or below 26.0 mpg. We are enclosing our legal analysis to this effect.

Question 9: A one-time rollback in CAFE standards for MY86 would forgive the auto manufacturers their inability to meet the 27.5 standard, given the "surprise" nature of the revelation that they would be unable to meet the MY1986 standard. However, all parties are aware of their potential inability to meet the MY87 and MY88 CAFE standards. In the Department's analysis, how much notice is required for an automobile manufacturer to comply with a CAFE standard if they discover they are falling short?

Answer: There are a great many variables that would affect the answer to this question. The amount of the shortfall and its specific causes would have to be considered in determining a manufacturer's capability. At the risk of stating the obvious, we can only say that larger shortfalls would take more time to correct than small ones. As we begin to review the manufacturers' fuel economy capability for model years 1987 and 1988, we will be examining the leadtime needed by the manufacturers to adopt technologies consistent with the statutory criterion of "economic practicability," which we have always interpreted as including consideration of consumer demand.

Question 12: Does NHTSA have the authority to set a "maximum feasible average fuel economy level" below the level which the three largest car manufacturers stated they can achieve?

Answer: The Act directs us to employ four criteria in setting the maximum feasible average fuel economy level. In setting the standard for any model year, we seek to determine the "maximum" level that can "feasibly" be achieved -- as determined by considering and balancing the four criteria. In the present rulemaking, we are proposing a level that we believe to be the maximum feasible level that the largest domestic manufacturers, Ford and GM, can achieve in MY 1986.

Question 14: What was the average fuel economy performance of all American on-the-road cars in 1973-1984? Supply the Subcommittee with this information on an annual basis. If the MY 1986 - MY 1988 CAFE is set at 26.0 mpg, what will the on-the-road fuel economy performance be for 1985 - 1990?

Answer: The agency has no comprehensive information on the average fuel economy performance of all American on-the-road cars in 1973-1984. For purposes of comparing the on-road fuel economy performance of cars with the ratings given them for CAFE purposes, the agency conducted a limited survey of cars from MY 1977 - MY 1981. This survey, to which we refer in the Preliminary Regulatory Impact Analysis for the 1986 CAFE proposal, showed that on-road fuel economy for cars in these specific model years was about 15 per cent below corresponding CAFE levels, a figure which corresponds to the 15 per cent discount factor used by the EPA in its consumer booklet on new vehicle fuel economy. We have not attempted to collect data which would show the average fuel economy for the on-road fleet as a whole, or which would enable us to project on-the-road fuel economy performance from 1985 to 1990.

Question 16: Are GM, Ford and Chrysler, with their current product mix and production level, capable of meeting a 26.0 mpg CAFE for MY 1987?

Answer: The agency has not yet completed its analysis of the capabilities of Ford and GM beyond MY 1986; thus, we are unable to answer this question.

Mr. **Markey**. Thank you very much.

You state in your opening comments that the free market factors will determine the levels of fuel economy over the long run, and that the laws of supply and demand will balance the need for fuel efficiency on the one hand, and the desire of the motoring public for performance and comfort on the other.

What concerns me is this: Is the desire of the motoring public for fuel efficiency the same as the national interest to be less dependent on foreign energy sources? Who is balancing the security needs of the United States to conserve energy in your free market analysis of the route that this country ought to go in extracting more energy conservation from its automotive fleet?

Ms. **Steed**. What I meant by that statement is that in the long run we believe the free market is the best regulator of fuel economy. However, we are faced with a standard that does require my agency to consider four factors, one of which, and a very important one, is energy conservation, and we are doing just exactly that.

Mr. **Markey**. No; my point is a broader one, though. It goes to the issue of the defense of this country and the commitment of enormous amounts of public expenditures for defense facilities, and especially for construction of naval forces in order to protect our supply source from the Middle East, and to make a commitment to the countries over there with regard to their security, largely as a result of their provision to our country of a very valuable natural resource, oil.

Do you believe that price alone, or taste and preferences of consumers, properly gauges the importance of our country reducing as much as possible the dependence upon that supply of oil and, as a consequence, reducing the amount of commitment measured in billions of dollars, that this country additionally has to fund in order to provide for the protection of that oil supply?

Ms. **Steed**. No, Mr. Chairman, I would not mean to imply that consumers know our national defense needs and gauge their fuel economy choices by that knowledge.

I am saying, however, that I do believe that price is a big factor in a consumer's choice of cars, and I think when we look back at what's happened in past years, that it was in fact the oil shortage and the actual and potential upward increase of gasoline prices that drove consumers to buy more fuel-efficient cars.

Mr. **Markey**. But the problem is that the marketplace doesn't always send signals that are at all concomitant with the long-term interest of the country. Even this past week there are reports of a 5- to 10-cent-a-gallon drop in the price of gasoline.

Does that mean we stop building fuel-efficient cars? What if it continues to drop? Does it mean that we in fact allow for the marketplace alone to determine the fate of our country's dependence upon that imported oil? And what role do you play and what role does the Government play in seeking to supplement the very real need that exists for additional energy consumption above and beyond that which has occurred, a good part of it spurred by the market forces, but another good chunk of it provided as an incentive by the law which we are now discussing here today?

Ms. STEED. Well, as I said, Mr. Chairman, we do have a responsibility to look out for fuel efficiency and to consider the need of the Nation to conserve energy as we do that.

In addition, we are not the only, and certainly not the primary, agency that has responsibility for energy policy.

Mr. MARKEY. Do you think the need is as great today to conserve energy as it was in 1975?

Ms. STEED. I think there is a need to conserve energy, and we are taking that portion of our statutory responsibility very seriously.

Mr. MARKEY. Do you think this country has the need to increase at the same rate its energy conservation standards and cumulative effect, as it did back in 1975? Or do you believe that the bulk of the gains that were able to be made, the easy gains, have already been made, and now it's just incremental at best?

Ms. STEED. No; I believe that there can be additional gains in the fuel efficiency of automobiles beyond where we are today.

Mr. MARKEY. You do? But do you believe that these gains can be made rapidly, or is it going to be a very, very slow, torturous, eyewatering pace that we are going to undertake and have to be saddled with from now on?

Ms. STEED. I think we have made many of the fuel economy gains that can be made, and the additional and incremental increases will be somewhat more difficult to achieve in the future.

Mr. MARKEY. The question is, what should be the speed, what should be the importance that we attach to those standards being met? I mean you are essentially telling us today that there is—or your preliminary comment back a month ago appears to be that you are going to, for the next year, anyway, allow a cessation of any further progress being made.

My great fear is that the marketplace doesn't give the right signals on energy, and the marketplace also won't be able to respond in a month or 2 months or 5 months if there is an energy shortage in the production of automotive technology to be able to then meet the situation of a cut-off of energy to our country.

Ms. STEED. I think you will see fuel economy gains. As I believe someone this morning pointed out, we are seeing individual automobiles that can achieve fuel economy levels of 55 miles per gallon. The issue that we will be addressing is the speed with which additional fuel economy gains can be made.

I would point out, however, that even in setting the standard at 26 miles per gallon, that is still increasing the fuel economy of automobiles from where they are right now by at least a half mile a gallon.

Mr. MARKEY. Do we have the necessary technology available to achieve a CAFE standard of 27.5?

Ms. STEED. In any individual automobile, that is correct. Of course we do.

Mr. MARKEY. I am talking about the corporate standard. Is the technology available for a corporate average of 27.5 available to in fact expect the major automotive manufacturers to meet it?

Ms. STEED. The technology gains have been made in order to meet the 27.5-miles-per-gallon corporate average fuel economy standard. But market conditions have changed, consumer buying practices we predicted long ago have changed, and technology is only one of the factors that we must consider.

Mr. MARKEY. So you are saying that because other considerations factor into this, that you would say that the CAFE standard of 27.5 might be something that is not going to be established as a standard past 1986, as well?

Ms. STEED. I am not sure I understand your question.

Mr. MARKEY. What I am saying is that although technology may be present for the auto manufacturers to meet a 27.5 standard, let us say, for 1987 or 1988, that doesn't necessarily mean that you or your agency would in fact require the auto manufacturers to meet it in those years either, because of other considerations that you would have to factor in?

Ms. STEED. That is, of course, a central issue in our rulemaking.

Mr. MARKEY. The answer is yes?

Ms. STEED. That is possible, but there are a lot of factors that must be considered with technology, such as economic practicability and the effect of other safety standards.

Mr. MARKEY. National security.

Ms. STEED. Yes.

Mr. MARKEY. What role does national security play in your deliberative process?

Ms. STEED. It would be an important point we have to take into consideration as we look at the need of the Nation to conserve energy.

Mr. MARKEY. How important, though? I want to get from you your sense of what role that ought to play in your decisionmaking process. I mean that was in fact the original intention of the law, was to deal with that national security issue.

Ms. STEED. That is correct, and the need of the Nation to conserve energy is one of the four primary criteria that we must consider, and we consider it a very important one as we pointed out in the notice of proposed rulemaking.

Mr. MARKEY. My time has expired.

I recognize the gentleman from Utah, Mr. Nielson.

Mr. NIELSON. Thank you.

Ms. Steed, on how many occasions has NHTSA granted manufacturers relief from these standards?

Ms. STEED. We have granted relief twice, I believe, Mr. Nielson. Once for the model year 1981 light truck standards, in response to a petition from Chrysler, and once in model year 1985 for light trucks in response to a petition from the Ford Motor Company.

Mr. NIELSON. What year was that?

Ms. STEED. Model years 1981 and 1985.

Mr. NIELSON. So it has been granted twice.

What do you find persuasive in granting relief from NHTSA standards?

Ms. STEED. We looked at the statutory criteria, and we found that conditions had changed from what we had predicted earlier. One of the primary factors, I think, was the fact that the price of gasoline had not gone up to the $2.00 or $2.50 level that we had predicted.

Mr. NIELSON. Did you consider customer preference at all in this case?

Ms. Steed. Yes, we did, and the types of use they were planning to put their trucks to. Again, we looked at all four factors.

Mr. Nielson. Would you agree that the economic assumptions made in 1975, when this was enacted, have not been realized?

Ms. Steed. I think that is absolutely true.

Mr. Nielson. If gasoline had in fact risen to $2.50 a gallon, do you think that 27.5 would have been reasonable?

Ms. Steed. Yes; I do. I think with that price of gasoline, consumers would have continued to insist on the smaller, more fuel-efficient automobiles.

Mr. Nielson. In view of the fact it is less than half of that, do you think we should change the standard legislatively, or do you have sufficient authority to do it yourself?

Ms. Steed. I think we have sufficient authority. We have used it twice in the past, and we are doing so again on this occasion.

Mr. Nielson. I know that you use an average of cars in your figuring. What kind of average is that? Is that a weighted average based on sales or based on production?

Ms. Steed. It is based on sales. That's why consumer demand plays such an important role in what a company's CAFE will be.

Mr. Nielson. If Chrysler added in their minivan, the Dodge and Plymouth minivan, would they meet the standard 27.5?

Ms. Steed. If they added in their minivan CAFE to their passenger car CAFE, no; they would not, as a matter of fact.

Mr. Nielson. Where do you draw the line between a car and a truck? A minivan, is that a car or is it a truck?

Ms. Steed. Chrysler counts their minivan as a light truck and includes those numbers in there.

Mr. Nielson. What about Ford? Do they do the same?

Ms. Steed. Yes; they do.

Mr. Nielson. And General Motors?

Ms. Steed. Yes; they do.

Mr. Nielson. So if we counted that vehicle, which many of us consider as just a different version of a station wagon—a station wagon, of course, is a car; right?

Ms. Steed. Yes.

Mr. Nielson. Isn't that rather an arbitrary division as to which is a car and which is not? We rented a couple of Chrysler product minivans to go to upstate New York when I had my whole family back here, and we considered it just a better, more convenient station wagon.

Mr. Felrice. It is, Mr. Nielson. There is some discretion given to the manufacturers within limits, and the minivans are essentially multipurpose vehicles. They could be used as a station wagon, they can also be used to haul cargo, in which case they are more like a truck. But because they serve many purposes, they can be classified either way at the discretion of the manufacturer, and all manufacturers have chosen to classify them as light trucks.

Mr. Nielson. So the averaging is a little bit dependent on how you classify the vehicles?

Mr. Felrice. To some extent, yes.

Mr. Nielson. Has your department noticed any effects from the administration's recent decision to let the voluntary restraint agreements expire?

Ms. **Steed**. Yes; we have. We do see Japanese auto companies taking a larger share of the market. Since the VRA was raised effective April 1, the Japanese share has gone up. It was about 14.7 percent in April; it rose to a high of 23.1 percent in July; and it dropped to 20.3 percent in August.

Mr. **Nielson**. Do you feel that GM and Ford have made a sufficient marketing effort to market their most fuel-efficient cars?

Ms. **Steed**. Yes; we do, and we did look at that very carefully. They have priced their optional, larger size engines much higher than the regular engines for their automobiles. They have also made efforts to have special financing plans for small cars, and special advertising programs for smaller cars. So we do believe they have taken a great deal of effort to market their smaller cars.

Mr. **Nielson**. There was a statement made by Congresswoman Boxer this morning that intrigued me. She said Chrysler's percentage of midsize and family size cars is higher than Ford's, yet they will meet the CAFE standard at 27.5 miles per gallon, and Ford won't. Do you agree with that statement?

Ms. **Steed**. No; I don't. We do not consider Chrysler to be a full-line manufacturer, and they do not produce——

Mr. **Nielson**. Even though her statement of midsize——

Ms. **Steed**. I don't understand that statement at all. They don't produce the larger size family cars, unless she is referring to the minivan.

Mr. **Nielson**. I will be asking Ford and Chrysler that question later. But that is new to me and surprising to me, because I had felt—I had heard from Ford Motor Co. that if they had the same mix they had when the law was contemplated, they would be 29 rather than 26, and it would be very easy to meet it if they had the same mix that was contemplated in the law.

Does that sound like a reasonable statement?

Ms. **Steed**. If I understand it, yes, it does.

Mr. **Nielson**. And would that apply to General Motors as well?

Ms. **Steed**. Yes; that is right.

Mr. **Nielson**. I thank the chairman.

Mr. **Markey**. The Chair recognizes the gentleman from Texas, Mr. Bryant.

Mr. **Bryant**. Thank you, Mr. Chairman.

Ms. Steed, I wanted to ask you if you believe the current law that set up the CAFE standard was a good idea when passed, and has been successful?

Ms. **Steed**. I think if we had our preference at the time the law was passed, we would have preferred to rely on consumer demand, as opposed to setting a government standard. If you are asking me whether or not it is successful, we certainly do have more fuel-efficient cars right now, but it would be very difficult, I think, to quantify the extent to which that law produced the fuel-efficient cars as opposed to the consumer demand in response to the energy crisis.

Mr. **Bryant**. That answered my second question. You are not sure that the current law produced the rapid and very unusual and admirable increase in the standards, that is in the mileage of these cars?

Ms. **Steed**. It may have had some effect. To say that it had the primary effect, I would not agree at all. We had oil price controls at that point, and we don't have them at this point.

Mr. **Bryant**. How does that relate to it?

Ms. **Steed**. You were asking whether or not it was a good idea at the time.

Mr. **Bryant**. Yes. But I guess I don't see how oil price control relates to——

Ms. **Steed**. Well, I think now the price can respond to consumer demand and would be a better regulator. At the time we had oil price controls, and it may have made some sense.

Mr. **Bryant**. Well, do you believe we ought to appeal the current law that provides for CAFE standards?

Ms. **Steed**. No; I have not said that.

Mr. **Bryant**. Well, I know you haven't said that. I'm just asking if you believe it should be. It's a logical extension of your position.

Ms. **Steed**. No; I would not advocate repeal.

Mr. **Bryant**. Why not?

Ms. **Steed**. I think the auto manufacturers have made great strides in fuel efficiency. I think they will continue to make great strides, and I think the standards are there as a reminder to do so, as long as we have the administrative flexibility to take into account some of the things that the original statute contemplated.

Mr. **Bryant**. Well, then, would that indicate you are likely in the future not to always relax—you relaxed this time, not to believe that you ought to constantly relax in order to let so-called consumer demand and deregulated oil prices make these decisions for us?

Ms. **Steed**. I think, as the Congress intended, we have to look at every individual situation. These particular decisions that are before us address one specific situation that the auto manufacturers are now facing. We would have to go and look at every situation in the future, and apply the four statutory criteria.

Mr. **Bryant**. Do you think if the standard is relaxed, there will still be an incentive for investment in the more fuel-efficient technology?

Ms. **Steed**. I do indeed. I think consumers are interested in fuel-efficient cars. We have seen that in our consumer surveys. The Energy Department, in its comments to the DOT, mentioned that it still sees consumers wanting more fuel-efficient cars. So I believe there will be an incentive, and as I have pointed out, even with the standard at 26 miles per gallon we expect there will be an increase in the actual fuel economy of cars of about a half a mile per gallon between 1985 and 1986.

Mr. **Bryant**. If there is that kind of interest, why would the major manufacturers then want to relax standards so they can continue to sell and profit from the sale of larger cars?

Ms. **Steed**. You have to look at what the standard requires and how you compute CAFE. If one is a full line manufacturer, as are GM and Ford, and consumers demand some of the larger cars, they are going to need some relaxation in order to be able to continue to provide those cars.

Mr. **Bryant**. I guess all I am pointing out is the consumers are demanding larger cars, and that means that's where the consumers' demand is. Why then would you want to invest money in technology to produce more fuel-efficient cars, if you can make more money by producing these kind for the time being, producing the bigger ones for the time being?

Ms. **Steed**. I don't believe that consumers overall have lost interest in fuel economy, and I believe that the car manufacturers know that.

Mr. **Bryant**. I have no more questions.

Mr. **Markey**. The gentleman from Ohio, Mr. Oxley.

Mr. **Oxley**. Thank you, Mr. Chairman.

The fact is, Ms. Steed, that this country has done a substantially good job in reducing our dependence on foreign oil—a much better job in conserving energy than anybody anticipated in the last several years since the oil crisis. Isn't that a fact?

Ms. **Steed**. That is absolutely correct.

Mr. **Oxley**. I am told that we reduced our overall energy usage by 15 percent. Is that a fairly close figure?

Ms. **Steed**. That's correct.

Mr. **Oxley**. And it also seems to me that whether the law was passed or not by the Congress, that indeed we would have still made substantial success in reducing our dependence on foreign oil and reducing our energy consumption. Do you agree with that statement?

Ms. **Steed**. Yes. As I said, it would be very difficult for me to try and quantify the role that the CAFE standards have had. I believe it was the price of gasoline at the time and the concern over oil prices at the time that started us on this road to conservation.

Mr. **Oxley**. I can remember back when that happened. I can remember a particular Senator from Ohio predicting gasoline at the pump selling for $3 a gallon, and doing his Chicken Little routine about this happening.

The fact is that the cost of gasoline in real terms actually is decreasing, and it's continuing to decrease; isn't that correct?

Ms. **Steed**. That's correct. We predicted in our estimates anywhere from $2 to $2.50 per gallon, and at this point we are seeing almost half of that level.

Mr. **Oxley**. Do you think that was because of the market mechanism, the fact that oil was decontrolled, that the available supply was increased, and coupled with the ability of the American consumer to conserve really brought about this change in the supply-demand situation?

Ms. **Steed**. Yes; I do.

Mr. **Oxley**. It's almost as if the famous invisible hand of Adam Smith was at work here. Without any Government involvement, it worked out pretty well, didn't it?

It seems to me from our perspective that the best argument against relaxing standards comes from Chrysler in that they say, well, we've already done this, why can't our big brethren do the same thing? What's your answer to that charge?

Ms. **Steed**. Well, I think we heard this morning that Chrysler, in response to their bankruptcy problems earlier, did make the changes to drop their larger cars to come down to only a few lines of automobiles. Therefore, they are not a full-line manufacturer. Ford and GM, on the other hand, are full-line manufacturers, and because they continue to produce the larger cars, station wagons, larger family cars, they are having a problem meeting CAFE at this point.

Mr. OXLEY. Thank you.

Thank you, Mr. Chairman.

Mr. MARKEY. The gentleman's time has expired.

The Chair recognizes the gentleman from Ohio, Mr. Eckart.

Mr. ECKART. One of the things that always concerns me, Mr. Chairman and Ms. Steed, is I'm not sure that this administration has a trade policy. The consequences of things that you do or don't do comes back full circle.

Last March the administration abandoned efforts to pursue a voluntary restraint agreement with Japan. Can you tell this committee what has been the share of U.S. market by month captured by the Japanese since the abandonment of the VRA?

Ms. STEED. I can. In April, the Japanese share of the U.S. car market was about 14.7 percent.

In May, it was 19.2 percent.

Mr. ECKART. Hold it, please. 19.2?

Ms. STEED. Yes. In June, it was 21 percent.

In July, it was 23.1 percent.

And in August, it was 20.3 percent.

Mr. ECKART. So since the VRA has come off, it's gone from 14 to somewhere between 20 and 23?

Ms. STEED. Yes, sir.

Mr. ECKART. Most of those cars are concentrated in the smaller compact to subcompact, higher mileage size, are they not?

Ms. STEED. Most of the Japanese cars? Yes, sir.

Mr. ECKART. So where that flood of cars has been coming in is going right to the heart of GM, Ford, Chrysler, small cars, too, as well?

Ms. STEED. It's definitely competition, yes.

Mr. ECKART. To the best of my knowledge, Japan is not importing full size cars.

Mr. FELRICE. No. But they are importing larger vehicles, with larger engines. In fact, most of the CAFE's of the Japanese companies over the last 2 or 3 years have declined significantly, as a result of importing larger vehicles. They tend to be in the compact, and in a few instances, midsize classes.

Mr. ECKART. I would assume they still have substantial levels of credits, however, because of their high CAFE's, because most of their market has been compact, subcompact.

Ms. STEED. That's correct.

Mr. ECKART. Well, let's assume that you turn the auto manufacturers down in their petition process. Let me construct a scenario and see if you would think it's likely or unlikely.

Given the statistical demonstration of an increased penetration since the VRA has come off in the area where America probably could be competitive in small cars, but a decision by you not to allow GM or Ford's petitions, forcing them out of the larger car business through one method or another, and the substantial accumulation by Japanese manufacturers of large numbers of credits. Is it not possible, likely even, that you will have maintained a disadvantageous competitive position of small cars and potentially risk surrendering the large car market from domestic manufacturers to foreign manufacturers?

Ms. STEED. That is a hypothetical situation, as you pointed out, but the effect of VRA is something we have to take into account as we determine economic practicability.

Mr. ECKART. But my scenario is not impossible.

Ms. STEED. No; it's not.

Mr. ECKART. And I'm correct in assuming that Japan does have substantial unused credits that could apply toward higher or lower CAFE numbers in the production of larger six-passenger-type cars?

Ms. STEED. They do have credits.

Mr. ECKART. When did you back off the $2 a gallon gasoline prices? The estimates?

Mr. FELRICE. We have generally used Department of Energy estimates. The $2 per gallon estimate was used in calendar year 1980, but there is not a routine process by which we update that every year. I cannot point to a specific date by which we said we no longer think it would be $2 a gallon in 1985.

Mr. ECKART. Let me ask another hypothetical. If the price of gasoline was in fact $2 a gallon or moving on a trend toward that, do you think that the petitioners before you today would not be petitioning and, in fact, economics would have moved purchases of their cars and would have given them a CAFE of 27.5?

Ms. STEED. Again, that is a hypothetical, but it is something we have looked at and we have made great technological strides in incorporating fuel-efficient technology into their automobiles. And if the market predictions that we had used back in 1980 had come true, I believe they would be meeting the 27.5. miles per gallon standard.

Mr. ECKART. What market forces other than car production or gasoline prices could have contributed or would contribute to your determination to grant the waivers sought by the companies?

Ms. STEED. Consumer demand for different types of automobiles, gasoline prices; those kinds of things.

Mr. ECKART. Are you going to look at the question I just discussed with you a little earlier, the penetration of Japanese—further Japanese levels in the American sales?

Ms. STEED. We have asked the companies for their projections of the effect of lifting the VRA on their corporate CAFE levels, and we will be analyzing those.

Mr. ECKART. What level of confidence do you have when you make predictions concerning things like gasoline? I know when we conduct political polls, we know that our standard error deviations could be 4 to 20 percent, depending on how large the sample is.

Ms. STEED. This kind of forecasting is indeed very difficult, and it is difficult to forecast what the CAFE will be. We have not been very good at that, nor have the car companies, nor has anyone else. And we have not been terribly successful in predicting the price of gasoline, as the Energy Department pointed out to us in their comments.

As far as the level of reliability, I have no idea.

Mr. ECKART. Why shouldn't we allow the companies just to pay the penalties and keep the standards where they are?

Ms. **Steed**. They could elect to pay the penalties. However, they are concerned, Mr. Eckart, about the unlawful conduct provision of the statute. If the purpose of the statute is to increase energy conservation, I would point out that simply paying penalties is not going to save a gallon of gasoline.

Mr. **Miller**. Congressman, if I might add, the determination of whether or not to pay penalties is one that's made by manufacturers and not by our agency. Our role is in determining the standard.

Mr. **Eckart**. Based on the requirements——

Mr. **Miller**. The four statutory criteria.

Mr. **Eckart**. One concern I have is the bit of changing the rules in the middle of the game. I am a former county prosecutor, and I know that if I got somebody convicted and they appealed, that process was there. One of the concerns I have about the legislation confronting me—I want to ask a philosophical question, too, and this will be my last one—is that companies are availing themselves of an opportunity put into the law, correctly or incorrectly, 10 years ago.

Do you think we should, at some future time, however, we should close the window, that is, continue your discretion through—in effect, the petitioners' request through 1988, but after 1988 not allow an appeals process?

Ms. **Steed**. I would not favor that. As I pointed out earlier, the auto manufacturers have availed themselves of that provision to petition twice in the past, and I think, given our inability or our limited ability to predict long-term economic consequences and so forth, I think that flexibility is justified in the law.

Mr. **Eckart**. I said the previous question was my last one. I want to ask one more.

Do you look at the conduct of the auto manufacturers, the fact that they have substantially no interest rate reductions for lower mileage cars over higher mileage cars, if in fact maybe GM should be giving 7.7 only for their Chevy Chevettes and their Celebrities, and not the big Caprices? Maybe we shouldn't have 7.7 on Fleetwoods, El Dorados, and the other big cars. I mean, is it sensible that they should be inducing consumer demand for the cars that miss the CAFE?

Mr. **Markey**. The gentleman's time has expired. The witness may answer the question.

Ms. **Steed**. We do look at the conduct of the auto companies. I think you will see in our analysis that we look to see what they have done to encourage the marketing of smaller, more fuel-efficient cars. Their record is pretty good on that.

As I said earlier, they have done things like pricing optional, larger engines at great increases over the regular engines.

As a matter of fact, it is kind of interesting, because if back in 1982 you look at the price of the optional larger engine for certain automobiles, of an Olds Cutlass Supreme, for example, the price of that larger engine was $70. The number of people purchasing that engine in an Olds Cutlass Supreme was about 19 percent in 1982. If you compare that with 1985, GM raised the price of that option from $70 to $490 for the larger engine, and the percentage of people purchasing that engine rose to 21 percent. So they tried to induce people to forego the larger engines, and they have tried in their marketing strategies to advertise and spend more of their advertising dollar on the market for the smaller more fuel-efficient cars.

Mr. **Markey**. The gentleman's time has expired, as has the time for our first witness. We thank you very, very much for your testimony. We understand the restrictions that you're under with a pending decision, but we very much appreciate your participation in the hearings this morning.

We would ask the next panel to please come forward, which will be Mr. Harold Sperlich, president of the Chrysler Corp.; Ms. Helen Petrauskas, vice president, environmental and safety engineering for the Ford Motor Co.; and Dr. Marina Whitman, chief economist and vice president, public affairs, of the General Motors Corp.

And at this point in the record, I would like to insert the Automobile Importers Association testimony. They were unable to be here this morning, but their comments will be included in the record in full. [See p. 445.]

Thank you very, very much for your attendance here this morning. You are the main course for the day, and it's getting just around lunch time, and we would like to begin with Mr. Sperlich, the president of the Chrysler Corp. Welcome.

STATEMENTS OF HAROLD K. SPERLICH, PRESIDENT, CHRYSLER CORP.; MARINA v.N. WHITMAN, VICE PRESIDENT, PUBLIC AFFAIRS, GENERAL MOTORS CORP.; AND HELEN O. PETRAUSKAS, VICE PRESIDENT, ENVIRONMENTAL AND SAFETY ENGINEERING, FORD MOTOR CO.

Mr. **Sperlich**. I am Harold K. Sperlich, president of the Chrysler Corp. On behalf of Chrysler, I commend you, Mr. Chairman and this committee, for holding these hearings concerning the current corporate average fuel economy standard, and the future of this Nation's fuel economy program.

Frankly, we believe that oversight by the Congress is desperately needed to ensure that NHTSA and the Department of Transportation resist making what could be a tragic policy mistake for this country and for the automobile industry.

Mr. Chairman, I spent 28 years in the automobile industry, designing, engineering, and producing cars and trucks. As president of Chrysler, I think I can speak with some authority on what it takes in terms of product and technological capabilities to meet the current 1986 statutory CAFE standard of 27.5 miles per gallon. But my experience tells me that meeting or not meeting the standard is primarily a matter of corporate philosophy.

At Chrysler, we will meet the 27.5-mile-per-gallon standard for 1986 because even when we were going broke a few years back, we consciously adhered to a corporate strategy geared to satisfying the market, while at the same time meeting the fuel economy law.

Among other things, the strategy included discontinuing several of our bigger cars in the early 1980's. For instance, we introduced the Chrysler Cordoba, a beautiful, mid-specialty car, in the 1980 model year and discontinued it after only three model years as a part of this overall strategy.

Had we kept that car, today I'm sure it would be selling very well and be very profitable. As it was, our strategy took us out of the very profitable market for 3 years, in fact, until next year, when we will introduce an all new 4-cylinder mid-specialty car.

Our competitors meanwhile have continued to offer their highly profitable models in this segment throughout the 3 years.

In addition to discontinuing certain models, Chrysler's strategy has also included the timely introduction of several new fuel-efficient models. In 1983, for example, we introduced the front wheel drive New Yorker, to provide a fuel efficient luxury model.

In 1984, we introduced our turbo charged front wheel drive four-cylinder sports cars, Chrysler Laser and Dodge Daytona, while GM and Ford continue to this day to offer heavier rear wheel drive.

Our strategy continues today on our plans to offer two new fuel-efficient domestically produced subcompacts next summer, including the Sundance and the Dodge Shadow, and as a part of our total plan to satisfy the market while providing fuel-efficient products.

Chrysler invested heavily in the small front wheel drive minivan well before our competition. In fact, back in 1977, when Chrysler faced a decision whether or not its K-cars should be front-wheel drive or rear-wheel drive, the decision that would lay in place the cornerstone of our products for the 1980's, we elected front-wheel drive, in spite of the enormous investment required, substantially on the basis of meeting the CAFE law.

In sum, Chrysler has been able to meet the law, while providing the American motorist with a full line of products that cover nearly every major market segment, from subcompacts to sports cars and all the way up to our full size Chrysler Fifth Avenue.

Despite assertions to the contrary, we are a full-line manufacturer. We just happen to also be a fuel-efficient manufacturer. Our compliance with the CAFE standard, with all of the problems we faced at Chrysler, is proof that the 27.5-miles-per-gallon standard is "technologically feasible."

Our competitors could have met the law as well, if they had adjusted their plans to do so.

Chrysler obeyed the CAFE law because it was the law, pure and simple, but doing so did not come cheaply. Since 1978, we invested close to $5 billion in fuel-efficient programs, much of it at a time when we were almost going bankrupt.

In fact, we spent another $400 million just to get the last increment from 26 miles per gallon to 27.5 miles per gallon.

Frankly, if Chrysler had known 5 years ago, when we were planning today's models, that we would be released from this obligation then, like the petitioners, we could have lessened our investments in new technologies, hung on to a few more of the biggies of our line, and consequently earned substantially greater profits.

Obviously, foregoing profits on top of making investments to achieve 27.5 miles per gallon immediately puts Chrysler at a competitive disadvantage if the CAFE standard is now rolled back.

Moreover, if the CAFE standards for 1987 through 1990 are also rolled back, that competitive disadvantage will continue into the future, as Chrysler will have proportionately less money than our competitors to plow back into the new products and future regulatory performance.

Frankly, Mr. Chairman, we don't think that's fair. GM, Ford, and several low volume luxury importers are flunking the standard, and Chrysler would end up paying the penalty.

The petitioners allege that one of the main reasons they flunked the standard was that they were unable to predict the future mix of the market due to "unforeseen circumstances."

Mr. Chairman, nobody is clairvoyant, especially when it comes to the future, but our strategy at Chrysler back then was to put in place a plan that would meet the market and meet the law, even if the market moved on us, and whatever rain fell, Mr. Chairman, fell on all of us

By the way, I find it ironic that on the one hand the petitioners say that they can't meet the CAFE standard because of the mixed shift to large cars, but on the other hand, both GM and Ford have massive incentive programs in place today worth over $2,000 a car in some cases to stimulate the sales of the very same full-sized low-mileage cars.

In fact, the petitioners had the same lead time we had, 10 years, and did not spend the last increment of money necessary to convert a large enough percentage of their fleet to fuel-efficient technology, technology they had on the shelf just as we did. While at the same time it appeared that they hung on to too many of their old technology but highly profitable rear drive cars.

So the petitioners have had the same lead time we've had, they've had essentially the same technology. I would guess they had the resources to meet the law, certainly more than we had. But now they portray the gloomy scenario of factory shutdowns and the loss of tens of thousands of jobs unless CAFE relief is granted.

Chrysler doesn't happen to believe these gloomy forecasts and, in fact, it appears the petitioners themselves don't believe them.

For example, contrary to Ford's earlier claim about staggering job losses, Louis Ross, Ford's executive vice president for North American Automotive Operations, recently implied in a press conference that Ford could achieve compliance with the 27.5-mile-per-gallon standard at a loss of "a couple of hundred jobs."

Mr. Ross said that Ford would do this by shifting the production of 25 percent of the parts of its low mileage Crown Victoria and Grand Marquis lines to Mexico, thereby removing these two models from domestic CAFE calculations.

In fact, on the jobs issue, let me go further and state that this committee should know that Chrysler will pay a $500 gas-guzzler tax on its popular Fifth Avenue model in 1986. The car misses the congressional criterion by one mile per gallon.

Now we don't necessarily like having to pay the penalty; yet there will be no protest and no threat from Chrysler to close any of our plants and move the production out of the United States or throw thousands of workers in the street. We are not nuts: We will simply make a smaller but nonetheless substantial profit on these popular full-sized cars.

And that, we think, is really the crux of the issue: profits. This rollback is not about saving jobs or saving factories. It's about maximizing profits, pure and simple.

The petitioners have foregone the incremental investments necessary to move their CAFE's to the statutory standard of 27.5 miles per gallon, and now they want an administrative ruling to forego paying the fines that the Congress intended as the penalty for noncomplying companies, rather than closing plants.

The law even provides for a soft landing. If the manufacturer fails for any reason to meet the standard, he is not forced to withdraw from the market or to throw people out of work. Rather, he pays a fine for his noncompliance and nobody loses his job.

We at Chrysler elected to pay the heavy cost of this national mandate for fuel economy up front with our investments and our decisions to take non-fuel-efficient cars out of production, to assure our compliance, rather than to pay at the back end for our failure to do so.

Ironically, the petitioners argue that if the CAFE standard is not rolled back, America will suffer. Just the opposite, we think, is true. Rolling back CAFE would, in our opinion, help increase the number one item in America's record trade deficit, petroleum. It would send yet one more signal to the American motorists that there is absolutely nothing to worry about on the energy scene, which of course is the same signal he was getting in 1973 and again in 1979.

Finally, rolling back CAFE would gut just about the last vestige of this country's fuel economy program.

That, I submit, Mr. Chairman, is bad public policy, and I hope this committee does everything within its power to prevent that from happening.

Thank you very much.

Mr. MARKEY. Thank you very much.

[The prepared statement of Mr. Sperlick follows:]

Statement by Harold K. Sperlich, President, Chrysler Corporation, before the Subcommittee on Energy Conservation and Power, of the Committee on Energy and Commerce, Washington, D.C., September 19, 1985.

Thank you, and good morning. I am Harold K. Sperlich, President of Chrysler Corporation.

On behalf of Chrysler, I commend you, Mr. Chairman, and this Committee for holding these hearings concerning the current corporate average fuel economy standard and the future of this nation's fuel economy program. Frankly, we believe that oversight by the Congress is desperately needed to ensure that NHTSA and the Department of Transportation resist making what could be a tragic policy mistake for this country and for the auto industry.

Mr. Chairman, I have spent 28 years in the auto industry designing, engineering, and producing cars and trucks. And as President of Chrysler, I think I can speak with some authority about what it takes, in terms of product and technological capabilities, to meet the current 1986 statutory CAFE standard of 27.5 miles per gallon.

What my experience tells me is that meeting, or not meeting, the standard is primarily a matter of corporate philosophy. At Chrysler, we will meet the 27.5 MPG standard for 1986 because, even when we were going broke a few years back, we consciously adhered to a corporate strategy geared to satisfying the market while meeting the fuel economy law.

Among other things, this strategy included discontinuing several of our bigger cars in the early 1980s. For instance, we introduced the Chrysler Cordoba, a beautiful, V-8-equipped two-door mid-specialty car, in the 1980 model year and discontinued it after only three model years as a part of our overall strategy. Had we kept that car, today I'm sure it would be selling well and be very profitable.

As it was, our strategy took us out of this very profitable market for three years--in fact, until next year when we will introduce an all-new, fuel-efficient, four-cylinder mid-specialty car. Our competitors, meanwhile, have continued to offer their highly profitable models in this segment throughout this time.

In addition to discontinuing certain models, Chrysler's strategy has also included the timely introduction of several new, fuel-efficient models. In 1983, we introduced a front-wheel-drive New Yorker to provide a fuel-efficient, luxury model. In 1984, we introduced our turbo-charged, front-wheel-drive, four-cylinder-only sports cars, Chrysler Laser and Dodge Daytona, while GM and Ford continue to this day to offer heavier, rear-wheel-drive V-8 Camaros and Mustangs in that same class. Our strategy continues today in our plans to offer two new fuel-efficient, domestically-produced subcompacts next summer, Plymouth Sundance and Dodge Shadow. And as a part of our total plan to satisfy the market while providing fuel-efficient products, in the truck fuel economy area Chrysler invested heavily in small, front-wheel-drive minivans well before our competition.

In fact, back in 1977, when the company faced the decision whether or not its K-cars should be front-wheel drive or rear-wheel drive -- a decision that would lay in place the cornerstone of our product plan for the 1980s -- we elected front-wheel drive, in spite of its enormous added investment requirements, substantially on the basis of meeting the CAFE law.

In sum, Chrysler has been able to meet the law while providing the American motorist with a full line of products that cover nearly every major market segment -- from subcompacts to sports cars, all the way up to our full-sized Chrysler Fifth Avenue. Despite assertions to the contrary, we are a full-line manufacturer -- we just happen to also be a fuel-efficient manufacturer. And our compliance with the CAFE standard, with all of the problems we faced at Chrysler, is proof that the 27.5 MPG standard is (quote) "technologically feasible" (unquote), and that other manufacturers could have met the law as well, if they had adjusted their plans to do so.

Chrysler obeyed the CAFE law because it was the law -- pure and simple. But doing so did not come cheaply. Since 1978, we have invested close to $5 billion in fuel-efficient programs--much of it at a time when we were almost bankrupt. Frankly, if Chrysler had known five years ago when we were planning today's models that we would be released from this obligation, then, like the petitioners, we could have lessened our investments in new technologies, hung on to a few more bigger cars of our own, and consequently earned substantially greater profits.

Obviously, foregoing profits on top of making the investments to achieve 27.5 MPG immediately puts Chrysler at a competitive disadvantage if the CAFE standard is now dialed back. Moreover, if the CAFE standards for 1987 through 1990 are also rolled back, that competitive disadvantage will continue into the future, as Chrysler will have proportionately less money than our competitors to plow back into new products and future regulatory performance. Frankly, Mr. Chairman, we don't think that's fair. GM, Ford, and several low-volume luxury importers are flunking the standard, and Chrysler is ending up paying the penalty.

The petitioners allege that one of the main reasons they flunked the standard was that they were unable to predict the future mix of the market due to (quote) "unforeseen circumstances" (unquote). Mr. Chairman, nobody is totally clairvoyant when it comes to the future, but our strategy at Chrysler back then was to put into place a plan that would meet the market and the law, even if the market moved on us. And whatever rain fell, Mr. Chairman, fell on all of us.

By the way, I find it ironic that, on the one hand, the petitioners say they can't meet the CAFE standard because of the mix shift to large cars, but on the other hand, both GM and Ford have massive incentive programs in place today worth over $2,000 a car in some cases to stimulate the sales of those very same full-size, low-mileage cars.

The fact is, the petitioners had the same lead time we had, but did not spend the last increment of money necessary to convert a large enough percentage of their fleets to fuel-efficient technology (technology they already had on the shelf, by the way), while at the same time, it appears that they hung on to too many of their old-technology, but highly profitable, rear-drive cars.

So the petitioners have had the same lead time we've had, they've had essentially the same technology, and I would guess that they've had the resources to meet the law--certainly more resources than Chrysler had.

But now, they've portrayed a gloomy scenario of factory shutdowns and the loss of tens of thousands of jobs unless CAFE relief is granted. Chrysler doesn't believe these gloomy forecasts and, in fact, it appears that the petitioners themselves don't even believe them.

For example, contrary to Ford's earlier claims about staggering job losses, Louis Ross, Ford's Executive Vice President for North American Automotive Operations, recently implied in a press conference that Ford could achieve compliance with the 27.5 MPG standard at a loss of (quote) "a couple of hundred jobs" (unquote). Mr. Ross said that Ford would do this by shifting the production of 25 percent of the parts of its low-mileage Crown Victoria and Grand Marquis lines to Mexico, thereby removing those two models from its domestic CAFE calculations.

In fact, on the jobs issue, let me go further and state that this Committee should know that Chrysler will pay a $500 gas-guzzler tax on its popular Fifth Avenue models in 1986. The car misses the Congressional criterion by one MPG. We don't necessarily like that we have to pay this penalty, yet there will be no protest and no threat from Chrysler to close any of our plants, to move production out of the U.S., or to throw thousands of workers out into the streets. We will simply make a smaller, but nonetheless substantial, profit on these popular full-sized cars.

And that, I think, is really the crux of this issue: profits. This rollback is not about saving jobs or saving factories; it's about maximizing profits, pure and simple. The petitioners have foregone the incremental investments necessary to move their CAFE to the statutory standard of 27.5 MPG; now they want an administrative ruling to forego paying the fines that Congress intended as the penalty for non-complying companies, rather than the closing of plants.

The law even provides for a soft landing. If a manufacturer fails for any reason to meet the standard, he is not forced to withdraw from the market and to throw people out of work; rather, he pays a fine for his non-compliance and nobody loses his job. We at Chrysler elected to pay the heavy cost of this national mandate for fuel economy up front to assure our compliance, rather than at the back end for failure to do so.

Ironically, the petitioners argue that if the CAFE standard is not rolled back, America will suffer. But just the opposite is true. Rolling back CAFE would help increase the number one item in America's already record trade deficit: petroleum. And it would send yet one more signal to the American motorist that there is absolutely nothing to worry about on the energy scene, which is the same dangerous signal he was getting in 1973 and again in 1979. And finally, rolling back CAFE would gut just about the last vestige of this country's fuel economy program.

That, I submit, is bad public policy, and I hope that this Committee does everything within its power to prevent it from happening.

Thank you very much.

Mr. **Markey**. Dr. Whitman.

STATEMENT OF MARINA v.N. WHITMAN

Ms. **Whitman**. Mr. Chairman, I am Marina Whitman, vice president in charge of the public affairs group and chief economist for GM.

I am pleased to have this opportunity to discuss our views on the CAFE standards and fuel economy bills pending in the House. I request permission, of course, to file a more complete statement for the record.

As the committee is aware, we have petitioned to reduce the 27.5 miles per gallon standard beginning in 1986, as provided by law. Circumstances have changed since the Energy Policy and Conservation Act was enacted. Gasoline prices have not risen to $2 to $2.50 levels anticipated only 4 years ago, and supplies are more plentiful than expected.

As a result, there has been a resurgence in demand for family size and better performing cars. Unless the standard is lowered, full line manufacturers face the prospect of restricting product availability, which translates into plant closings, job losses, and lower economic growth.

Fortunately Congress foresaw the possibility of changed circumstances and gave NHTSA authority to lower the standard to 26-miles-per-gallon.

A copy of our petition to that agency has been provided to the subcommittee.

Since oil prices were decontrolled in 1981, non-OPEC supplies have increased by nearly 6 million barrels a day, and the price of gasoline at service stations has dropped significantly. In fact, inflation-adjusted retail fuel prices have dropped about 30 percent since 1981.

Because of the resulting shift in consumer demand, auto manufacturers such as General Motors, who produce a full line of cars, are experiencing increasing difficulty in meeting the fuel economy standards.

To avoid fuel economy penalties in 1983 and 1984, GM was able to draw on over $1 billion in credit it had accumulated by virtue of having exceeded the standards in earlier years. However, because of the 3-year limitation on carrying credits forward, over $500 million of the credits expired unused and no more remain. For model years 1984 through 1987, therefore, we are forced to rely on carrying back credits projected to be earned in future years to offset our current deficiency.

GM should still be able to earn the necessary credits and avoid product restriction if its petition is granted. Without such action, the company must anticipate the prospect of restricting production with attendant employee layoffs to achieve compliance.

As NHTSA has noted under the law, failure to comply with the standards after applying credits constitutes "unlawful conduct." Accordingly, GM does not consider the payment of civil penalties to be a reasonable alternative when determining its long-term compliance strategies.

Our current difficulties are not the result of a failure to make product improvements. GM has maintained an ongoing commitment for fuel economy improvement since before the Arab oil embargo in 1973. As an example, our new large cars equipped with six cylinder engines have better fuel economy than our compact models with six cylinder engines that we built 10 years ago. Thus, technology is not the issue.

Experience convinces us that fuel prices and perceived fuel availability are the most important determinants of our CAFE; both are factors beyond our control.

We believe that Congress did not intend to force domestic full line manufacturers to take compliance measures that would lead to potentially serious economic upheavals, including massive layoffs, or that would significantly impede consumer choice. This is evidenced by the House report stating that the legislation was not intended to result in "unduly limiting consumer choice."

With regard to House Resolution 210, we obviously hope that it would not pass. The resolution potentially endangers the very petitioning process in which we are engaged, and for which Congress provided in anticipation of changed circumstances. If adopted by the House and adhered to by NHTSA, it would result in the very harm to the industry and the national economy that Congress sought to avoid by including amendment flexibility in the statute.

For those same reasons, we oppose H.R. 1425, which would eliminate the administrative discretion to lower the standard.

In addition, we are convinced the CAFE proposals of House Resolution 1024 are inappropriate and unnecessary. To increase the CAFE standards in the future would cause severe disruptions in the domestic automotive industry, in effect penalizing it because gasoline prices have declined.

Moreover, it would provide an advantage to foreign manufacturers of small cars who have accumulated sufficient credits to permit the introduction of larger cars to meet consumer demand. Indeed, this trend has already begun.

As a practical matter, the major goal of the law to achieve substantial petroleum conservation is being achieved. Adjusting the standard as we recommend would result in increasing gasoline consumption less than one-tenth of 1 percent per year, and would facilitate a sensible reallocation of priorities that is fully consistent with the objectives of the law and in tune with the economic and competitive realities of 1985.

Thank you.

Mr. MARKEY. Thank you very much.

[Testimony resumes on p. 283.]

[The prepared statement and attachment of Ms. Whitman follow:]

Statement of

General Motors Corporation

Mr. Chairman, I am Dr. Marina v.N. Whitman, vice-president in charge of the Public Affairs Group and chief economist for General Motors Corporation. I am pleased to have this opportunity to discuss our views on the Corporate Average Fuel Economy (CAFE) standards.

As the Subcommittee is aware, we have petitioned to reduce the 27.5 miles per gallon standard to 26.0 mpg beginning in 1986, as provided by law. Circumstances have changed since the Energy Policy and Conservation Act (EPCA) was enacted. Gasoline prices are substantially below the levels anticipated just four years ago and supplies are more plentiful than expected. The result has been a resurgence in demand for family--size cars and better performing cars. Unless the standard is lowered, full-line manufacturers, to achieve compliance, face the prospect of restricting product availability, which translates into plant closings, job losses and lower economic growth.

In July of 1983, we appeared before this Subcommittee to discuss our progress in increasing the fuel economy of our products. We noted then that as a result of a number of technologically ambitious and expensive product programs, GM's fleet fuel economy average had more than doubled since 1974. We also reported that as a result of declining fuel prices GM faced the dilemma of having a fleet average fuel economy for 1983, 1984 and 1985 that might not meet the CAFE standards. Because of this possibility, GM asked that Congress remain sensitive to changing market conditions.

In July 1984, GM appeared again before this Subcommittee and once again projected CAFE shortfalls as the result of a shift by American customers toward the purchase of more family-size cars and larger engines. This shift in consumer preference was the direct result of declining fuel prices and stable fuel supplies accompanied by a strong economic recovery. Nevertheless, by using credits available from prior years and credits projected for future years, we stated that GM expected to meet the requirements of the law.

Since our last testimony before this Subcommittee, it has become clear that the fuel economy standards are no longer consistent with the world energy situation, nor do they fit today's competitive environment. By early 1985 we recognized that it may not be possible to comply with the current standards without severe product restrictions. Thus, GM petitioned NHTSA to exercise its authority under EPCA by amending the CAFE standard to 26.0 mpg for 1986 and thereafter. NHTSA subsequently has proposed to reduce the 1986 standard to 26.0 mpg, and to consider further changes in subsequent rulemakings.

Energy Considerations

In the turmoil created by the OPEC embargo of October 1973, the U.S. imposed numerous controls relating to energy based on assumptions about petroleum availability and price that turned out to be wrong.

In 1975, OPEC produced approximately 50 percent of the world's crude oil versus only 32 percent currently. Of U.S. petroleum imports, only slightly over one-third is supplied by OPEC, a substantial reduction from a level of about 60 percent in 1975. Today, less than 2 percent of our oil supplies come from the Persian Gulf countries. The leading source of U.S. imports is Mexico, followed by Canada and the United Kingdom.

Furthermore, since oil prices were decontrolled in 1981, non-OPEC supplies have increased by nearly six million barrels per day and the price of gasoline at service stations has dropped significantly. Most critically, 1985 gasoline prices have not come close to the $2.00-$2.50 per gallon anticipated by some experts just four years ago. In fact, inflation adjusted retail fuel prices have dropped about 30 percent since 1981. Also, the projected shortage of world oil supplies anticipated by many experts has not occurred.

The combination of ample petroleum supplies, which has been characterized as a glut, and gasoline prices in the range of $1.18 per gallon have caused a strong continued consumer demand for family-size cars and cars capable of pulling trailers. These kinds of cars have traditionally been popular with U.S. buyers for the utility, comfort and roominess they offer. Consequently, auto manufacturers such as General Motors who produce a full line of cars are experiencing increasing difficulty in meeting the fuel economy standards.

Failure to meet the CAFE standard in any particular year carries potentially heavy penalties. In 1983 and 1984, GM was able to draw from over $1 billion in credits it accumulated by virtue of having exceeded the standards in earlier years. However, because of the three-year limitation on carrying credits forward, GM no longer has available any credits from previous years, although over $500 million of the credits expired unused.

For model years 1984 thru 1987, therefore, GM is forced to rely on carrying back credits projected to be earned in future years to offset our current and projected deficiencies. Use of carryback credits to achieve compliance is provided for under the law. However, projections of credits to be earned are highly speculative because of their dependence on predictions of sales volumes and mix. These, in turn, depend upon predictions 3-5 years in advance regarding such factors as oil prices, general economic conditions, interest rates and the actions of competitors, all factors beyond our control.

GM should be able to earn the necessary carryback credits and avoid product restrictions if its petition is granted. Without such action GM must anticipate the prospect of restricting production, with attendant employee lay-offs, to increase its CAFE to levels sufficient to achieve compliance.

GM does not consider the payment of civil penalties to be a reasonable alternative when determining its long-term compliance strategies. Thus, it may be necessary for us to restrict production of some of our best selling cars simply to improve our CAFE if we are to avoid noncompliance with the act.

Technology Considerations

It is important to note that our current difficulties are not the result of a failure to make product improvements. We have made many important advances and have established aggressive technological goals, which continue to challenge our engineers. Unquestionably, in our quest to continue to offer the American motorist a full-line of vehicles that meet the CAFE standard, we have not always hit these aggressive technological goals and there have been slippages in our fuel economy estimates as we move from the drawing board to the production line. As a general observation, the statute is technology-forcing. As a consequence, it should be understood that some technological goals may not be fully achieved despite best efforts.

Further, the worst recession since the 1930s -- one that saw the industry suffer combined losses of over $4 billion in one year and peak auto-related lay-offs of more than 650,000 people -- did force us to delay certain product programs.

Nevertheless, GM has maintained an on-going commitment to fuel economy improvements across the full range of its products since before the Arab oil embargo in 1973. From 1974-84, GM spent over $40 billion for new products, plants and equipment. It should be noted that even in the recession of 1980-82 our capital investment was at record levels. We have made the necessary investment to provide the capacity to build a full-range of fuel-efficient cars. In fact, our new large cars equipped with six cylinder engines have better fuel economy than the compact models with six cylinder engines we built 10 years ago.

Yet despite our efforts and investments, we were forced in 1982 to close two assembly plants which had been fully converted to produce our new, highly fuel efficient compact and mid-size cars. The cost of these conversions was $130 million but the plants were closed because demand for those cars did not develop during this period of sharply declining gasoline prices. For the same reasons, an engine plant converted at a cost of about $300 million to make engines for small cars and trucks was idled last year for lack of consumer demand.

From a purely technological standpoint, we have implemented a number of major changes in our products that have contributed significantly to improve fuel economy. For example, GM cars are 22 percent lighter...that is an average weight reduction of 1100 pounds since 1974. Lock-up converter clutches have been added to all GM automatic transmissions, and 44 percent of GM cars are now equipped with new 4-speed automatic transmissions. GM has developed and put into production new more efficient engines which have incorporated fuel economy improving technologies such as multi-point fuel injection, throttle body fuel injection, friction reduction in the engine and accessories and fast-burn combustion. These same technologies have also been added to many of GM's carry-over engines. Further, GM has introduced fourteen new car platforms in the last decade, and has incorporated extensive computer-based electronics which has allowed the optimization of GM cars for emissions, fuel economy, and driveability. Fuel economy improvement efforts were directed towards both small and large cars, compatible with the GM conviction that all GM customers should benefit from fuel conservation efforts.

GM vehicles were equipped with low rolling resistance tires and many other changes to reduce parasitic losses and to improve aerodynamics. In fact, no part of the vehicle has been overlooked in this comprehensive and intensive effort to improve fuel economy. There is no question that the fuel economy technology contained in GM products is second to none.

In sum, we have vigorously exploited the technologies that can provide better fuel economy in our cars. The one major step we have not taken is to abandon selected segments of the market. Unlike Chrysler which made a business decision to abandon the large car segment of the market and dedicate its then limited capital resources to smaller cars, GM still attempts to provide vehicles capable of meeting the full range of transportation demand.

As we have emphasized in previous testimony, experience convinces us that fuel prices and perceived fuel availability appear to be the most important determinants of our CAFE. Both are factors beyond our control. As fuel prices increase or decrease, and consumer perceptions about fuel availability change, new car purchasing decisions change.

Nevertheless, GM has made every reasonable effort to use marketing incentives to promote more fuel efficient car lines. Such incentives as reduced interest rates, direct cash reductions and delayed initial payments have been used to promote fuel efficient models. In addition, GM reduced the price of optional diesel engines and increased the option prices of larger gasoline engines. Most importantly, GM increased small car prices less than 2 percent per year between 1981 and 1985 -- less than half the rate of inflation -- while the average car price increased 4 percent per year during that period.

Impact of Retaining the Standard

Some have argued that granting a reduction in passenger car fuel economy would jeopardize our national security and divert us from the long-range goal of energy sufficiency. But that is simply not the case. Reducing the standard from 27.5 mpg to 26.0 mpg would not have any significant impact on fuel consumption or energy conservation. The average increase in U.S. total gasoline consumption associated with a 26 mpg standard for 1986 would be less than one-tenth of one percent. The effect on U.S. total petroleum consumption would be less than four--hundredths of one percent. To put that into perspective, if the present excess world refining capacity were utilized for just an additional nine seconds per year, the full increase would be met.

Moreover, even this estimate is overstated. By depriving American consumers of some of the larger new cars they want and are willing to pay for, an excessively stringent standard would encourage the retention and continued operation of older, larger cars that meet their needs but are less fuel efficient than today's large cars. In doing so, much, if not all, of the small savings attributed to retaining the current standard would be eliminated.

Competitive Considerations

The effect on competition and employment if the standard is not lowered could be significant. For example, there is wide agreement among independent analysts that today the Japanese have a landed cost advantage in the U.S. for their subcompact model cars of $2,000 or more. This cost disadvantage prevents us from effectively using price incentives to shift demand to domestically built small cars because any price decrease can be readily matched by Japanese competitors.

While we are making a major effort to narrow this cost advantage by launching promising and expensive programs to improve our competitiveness, such as GM's new Saturn Corporation, our efforts could be slowed if we are forced to restrict vehicle production with its attendant loss of revenue, simply in order to achieve compliance with the fuel economy standard. Moreover, such restrictions would result in substantial reductions in employment not only in the auto industry but for suppliers and in distribution across the country.

Furthermore, restriction of production would benefit certain foreign manufacturers who have historically specialized in subcompact and compact cars and who have accumulated a large bank of fuel economy credits which would allow them to manufacture and import larger cars to meet the demand of that segment of the market. Evidence of these actions by Japanese manufacturers is already appearing. A recent (August 12) U.S. Today cover story Japan Cast Designs on Midsize Cars reported that "Japan the world's premier small car maker, is restless for a new challenge. Its next target: the USA's midsize car market"...The article continues by quoting Albert Warner, motor vehicle director of the U.S. Commerce Department who says "No doubt about it, that's where the competition is coming, starting in 1987-1988." In other words, unless the standard is lowered we may suffer the perverse consequence of having to restrict production in a segment of the market in which we presently enjoy a competitive advantage and lay-off employes who are making cars that Americans want to buy. Such a restriction of production would probably lead to increased auto prices while limiting consumer choice. In addition, there may not be any increase in fuel conservation as consumers would merely shift purchases or retain their older, less fuel efficient vehicles. Finally, the automotive trade balance would be adversely affected.

Resolving the Problem

Fortunately, Congress recognized that conditions might change between 1975 and 1985, so it provided the Secretary of Transportation with the authority to reduce the standard from 27.5 mpg, for 1985 and later years, to 26.0 mpg.

We believe that Congress did not intend to force domestic full-line manufacturers to take compliance measures that would lead to potentially serious economic upheavals, including massive lay-off, or that would significantly impede consumer choice. This is evidenced by the House Report stating that the legislation was not intended to "unduly limit consumer choice."

With regard to House Resolution 210 we obviously hope that it would not pass. The resolution potentially endangers the very petitioning process in which we are engaged and for which Congress provided in anticipation of changed circumstance. If adopted by the House and adhered to by the NHTSA, it would result in the very harm to the industry and the national economy that Congress sought to avoid by including amendment flexibility in the statute.

In addition, we are convinced the CAFE forcing proposals of H.R. 1024 are inappropriate and unnecessary. To increase the CAFE standard as H.R. 1024 seeks, could cause severe disruptions in the domestic automotive industry -- in effect penalizing it because gasoline prices have declined. It would give an artificial government-induced competitive advantage to manufacturers of imported small cars, and would deprive the public of the type of transportation it desires. (Even today, no car with a gasoline engine having more than four cylinders is rated above 27.5 mpg.) Furthermore increasing the standards would not serve to limit gasoline consumption to a significant degree. We believe it is not economically practicable to raise the standard and the needs of the nation to conserve energy do not require it.

Also GM opposes the proposal in H.R. 1425 which would eliminate the administrative discretion to reduce the 27.5 mpg CAFE standard. Such a proposal would eliminate the current flexibility in the law which allows for changed circumstances. Past fluctuations in fuel prices and availability clearly support the need for such flexibility.

As a practical matter the major goal of EPCA, to achieve substantial petroleum conservation, is being achieved. Adjusting the standard as we recommend would facilitate a sensible reallocation of priorities that is fully consistent with the objectives of EPCA and in tune with the economic and competitive realities of 1985.

Q. What is your company's maximum feasible average fuel economy level for Model Year 1986, 1987, and 1988?

A. The determination of maximum feasibility by statute considers four criteria, including economic practicability. Fuel price and availability, which are critical elements of economic practicability, are factors beyond our control and ability to predict with complete accuracy. Therefore, for the reasons set forth in our March 1985 petition to NHTSA, (see attached) we project the maximum feasible average fuel economy level to be 26.0 mpg for model years 1986, 1987 and 1988.

Q. What are your company's projections for the price and supply of oil over the next ten years? Does your company foresee an energy crisis by the year 2000?

A. Currently, General Motors expects a gradual increase in the price of oil over the next ten years. Corresponding to this projection, the price of gasoline is expected to increase, but not above its peak (1981) in constant dollar terms. This projection is contingent on many assumptions. In particular, it assumes the exchange value of the dollar will weaken substantially. If the value of the dollar remains unchanged compared to foreign currencies, the price of gasoline is not expected to increase in real terms. Moreover, there is a significant potential for actual fuel prices to vary from the projection.

GM does not anticipate any major supply shortfalls within the next ten years. Most of the uncertainty associated with the supply of oil has been due to actions taken by OPEC and to the Persian Gulf crises. The threat of significant interruptions in supply from these sources has been dramatically reduced. Major new non-OPEC petroleum output has been initiated from many parts of the world, thus diversifying our sources and lessening OPEC's influence. Since 1979 non-OPEC supplies have increased by six million barrels per day including gains from Alaska, the North Sea, and Mexico. The production of petroleum from the Persian Gulf area now accounts for only 20 percent of free world supplies, down from over 40 percent in 1979. And the potential exists for further increases in supply from non-OPEC countries such as Mexico, Norway, Columbia, India, and others. Moreover, in the unlikely event of a major supply disruption, of petroleum supply our sizeable Strategic Petroleum Reserve would be an effective short-term replacement until some of the existing excess production capacity could be reactivated.

General Motors does not anticipate an energy crisis by the year 2000. As published in the authoritative Oil and Gas Journal, proved oil reserves are up 25 percent from 1970 to 1984, with the largest gains in the non-OPEC countries of Norway, the U.K., and Mexico. Over the same fourteen year period, free world oil production is up just 5 percent. In fact, any reduction in reserves in the U.S. has been more than offset by increases from other non-OPEC sources. These trends will help prevent a future crisis. Moreover, alternative fuels such as methanol may become viable substitutes for gasoline by the year 2000. Methanol can be produced from domestic natural gas or from domestic coal, and will become economic as world oil reserves are gradually depleted.

Q. How much money has your company invested in CAFE compliance over the past ten years? How much money do you expect to spend over the next one, two and three years to comply with the CAFE standard? How much money would have to be expended over what period to achieve the current CAFE standard of 27.5 mpg? How much is that expenditure on a per car basis, based upon current corporate sales projections?

A. GM has spent more than $40 billion over the last decade to upgrade plants and design new products to provide the necessary capacity and support facilities to produce a mix of vehicles and fuel efficient powertrains that will meet the CAFE requirements as specified by the fuel economy regulations.

GM currently expects to spend proportionately more per year over the next three model years than was spent on average over the last decade, relative to new vehicles, powertrain programs and support facilities.

It should be noted that the fuel economy technology applied to GM products is second to none. Historically, GM's operating plans and the capital expenditures required to achieve these plans have been designed to allow GM to meet the 27.5 mpg standard. However, due to lower than projected fuel prices and the resultant sustained strong market demand for larger vehicles, the 27.5 mpg CAFE is not currently being achieved. Due to lead time constraints, other than those changes already planned, there are no product changes (either technology or new models) that can be implemented to increase the 1986 and 1987 model year CAFE to 27.5 mpg.

Q. Will your company pay a gas guzzler tax on any 1986 models? 1987 models? If yes, supply the Subcommittee with the model name and the estimated tax payment?

A. For the 1986 model year General Motors does not currently expect to sell any cars which fall below the 22.5 mpg "gas guzzler" threshold. Similarly, GM currently projects that none of its passenger cars will be classified as "gas guzzler" for the 1987 model year.

Q. Taking into account the recent EPA CAFE adjustment, what carryback/carryforward credits did your company possess after MY 1984? 1985?

A. The fuel economy projections which GM submitted in its petition to lower CAFE standards included test procedure adjustments which had been proposed by EPA in its December 1984 NPRM. As a result, the EPA's CAFE adjustments which were ultimately granted had no effect on General Motors' projected carryback/carryforward position.

A total of $462 million in carryforward credits will be applied against the 1984 shortfall after we have been officially advised by NHTSA. GM will then have no remaining carryforward credits. (Over $500 million in credits expired unused prior to model year 1984 because of the three year limitation on carrying credits forward.) Because 1984 and 1985 CAFEs are below the relevant standards, GM did not generate any credits. Thus, GM currently has no credits although it projects it may earn carryback credits in the future.

Q. Has your company projected earning carryback/carryforward credits for Model Year 1987-1989? Please supply the Subcommittee with your projections for any credits your company may earn in these model years?

A. GM does not expect to be in a position of generating carryback credits until the 1988 model year. Absent an amendment to the standard to 26.0 mpg or significant product restrictions the credits generated in 1988 and beyond will not be sufficient to attain compliance. As presented in GM's August 2, 1985 Mid-Model Year Report, GM's current compliance plan for the 1985-1990 period therefore includes product restrictions. Implementation of the compliance plan would result in a significant cost to GM and the national economy in terms of lost production volume and the concomitant loss of employment.

Q. Approximately how much profit does your company earn on each car line? This information may be provided within a range?

A. On an overall basis, GM's profit margin over the past ten years has averaged under 4%, or less than 4¢ of profit per dollar of sales, which compares with nearly a 7% average in the prior 10-year period. While it is possible to measure material, labor and other closely-related manufacturing costs of any vehicle, there are a number of overhead costs associated with running the business which cannot be clearly allocated to any particular vehicle or non-vehicle product line. Further, the write-off of fixed capital investment costs is based on accounting conventions which vary from company to company within the industry. Accordingly, it is not possible to provide meaningful product line profitability data.

Q. How many car lines has your company added and phased-out over the past five years?

a) In responding to this question, supply the Subcommittee in table form with the date/Model Year and the approximate fuel economy of each of these lines when they were introduced or retired.

b) Has your company delayed in retiring or phasing out any car model over the past five years? Provide the Subcommittee with any examples where the introduction or retirement of a car line was delayed, and the fuel economy of the car line.

A. Since 1980, nine new car lines have been added and six car lines have been phased-out.

MY 1980	MY 1982	MY 1984	MY 1985
I - New FWD "X" (April 79) 24.6 mpg	I - New FWD "J" (April 81) 28.7 mpg	I - New RWD "Y" (October 83) 19.9 mpg	I - New FWD "C" (April 84) 23.1 mpg
	I - New FWD "A" (January 82) 27.3 mpg	I - New RWD "P" (October 83) 31.2 mpg	I - New FWD "N" (August 84) 29.0 mpg
	I - New RWD "F" (January 82) 21.2 mpg	I - New FWD "A" SW (October 83) 24.1 mpg	
R - Old RWD "X" (December 78) 19.1 mpg	R - Old RWD "F" (July 81) 19.9 mpg	R - Old RWD "Y" (December 82) 18.5 mpg	R - FWD "X" (April 85) 28.4 mpg
R - Old RWD "H sp" (December 80) 24.1 mpg		R - Old RWD "A" SW (July 83) 22.2 mpg	
		R - Old RWD Buick & Olds "C" (December 83) 21.4 mpg	

I = Introduced
R = Retired
NOTE: No car lines were introduced or retired in Model Years 1981 and 1983.

MY 1982 - The RWD "A" was retained when the FWD "A" was introduced because of consumer demand. The RWD "A"'s fleet had a CAFE of 23.7 mpg vs. the new FWD "A" fleet which has a CAFE of 27.3 mpg.

MY 1983 - The totally redesigned "Y" car and the new "P" car were originally scheduled for introduction in 1983. However, both models were delayed for one year to provide time for further engineering development.

Also, the full-size "C" car and "B" car which had been redesigned and downsized in 1977, where scheduled to go front-wheel-drive in 1983 which would further improve their fuel economy. However, the "C" car was delayed two years until 1985 and the "B" car was delayed three years until 1986 for further engineering development.

MY 1984 - The totally redesigned "E" and "K" cars were originally scheduled for introduction in 1984. However, it was delayed for two years for program redefinition and to provide time for further engineering development.

MY 1985 - The RWD "C" Cadillac was retained when the FWD "C" was introduced because of consumer demand. The old RWD "C" fleet had a CAFE of 21.4 mpg vs the new FWD "C" which has a CAFE of 23.1 mpg.

Q. What is the average curb weight of vehicles sold by your company, on an annual basis, for 1978-1985? What is your anticipated average curb weight for Model year 1986?

A. The Average Test Weight* of GM vehicles are as follows:

Model Year	Avg. Wt. (Lbs.)
1974	4460
1975	4490
1976	4390
1977	4180
1978	3790
1979	3760
1980	3480
1981	3560
1982	3500
1983	3590
1984	3470
1985	3460
1986**	3361
Total Reduction 1974-1986	1099 lbs

* EPA defines test weight as curb + weight of options that are at least on 33-1/3 of car line.

** Estimated

Q. What percentage of cars sold by your company in 1985 were front-wheel drive? Had four-cylinder engines? Had six-cylinder engines?

A. In 1985, 60% of our passenger car production is FWD. 29.0% of production is equipped with four-cylinder engines, 38.3% equipped with six-cylinder engines with the remaining 32.5% are equipped with V-8 engines.

Q. When did your company first ascertain that it would fail to meet the 1986 CAFE standard?

A. As a matter of record, GM first submitted a CAFE projection for 1986 that was below the 27.5 mpg standard as part of our 1984 pre-model year report in December of 1983. At that time we also noted that we expected to comply with the law by using carryback credits. However, by March, 1985 the uncertainty about our ability to comply without production restrictions and the accompanying layoffs of tens of thousands of employees of GM, its suppliers and distributors became sufficiently significant that we believed it necessary to seek a reduction in the standard.

Q. Will your company achieve a 27.5 mpg CAFE in Model Year 1987? 1988? 1989? 1990? If available, what is your company's projected CAFE for 1990?

A. GM's 1985 Mid-Model Year Report projections of CAFE indicate that GM could exceed the current 27.5 mpg standard in the 1988 model year and thereafter. For the 1990 model year GM currently projects its CAFE will be approximately 29.0 mpg. However, these fuel economy projections are necessarily fragile since we cannot foresee with sufficient accuracy the multitude of variables that influence CAFE and their interaction. Unanticipated downward changes in fuel prices for example could negatively impact GM's CAFE in two ways; i.e. sale of fewer small vehicles, and the sale of more large vehicles.

Q. What is the projected fuel economy and sales mix for the compact J-bodies, GM20's and A-wagons?

A. The answer to the above question for the 1985 model year is as follows:

Year	Car Line	Fuel Economy	% of Fleet
1985	"J" (Coupe/Sedan)	29.90	11.2
	"J" (Wagon)	29.60	1.7
	GM-20	29.0	5.6
	"A" (Wagon)	24.50	3.6

In 1985, GM produced only a 2 door coupe in the GM 20 product line. In 1986, GM will have available a four door GM 20 sedan.

Q. When does the 1986 model year end for the rear-wheel drive large cars (B and C) bodies? How many cars of this type are projected to be sold in the last three months of 1986?

A. These car lines are scheduled to cease production as 1986 models in July of 1986. It is not possible to determine exactly how many vehicles will be sold in the last three months of 1986 as stated in your question. However, GM is not scheduled to build any 1986 "B" or "C" car models in the last three months of 1986.

Mr. **Markey**. Our final witness on the panel is Ms. Petrauskas. Would you please begin your statement.

STATEMENT OF HELEN O. PETRAUSKAS

Ms. **Petrauskas**. Mr. Chairman, I am going to summarize my testimony and ask that the whole statement be inserted in the record.

In summary, then, Ford has spent more than $14 billion to redesign its entire product line for improved fuel economy, and has met or exceeded expected technical improvements.

We have reduced the weight of the average car by over 1,100 pounds. We have reduced the average engine displacement by about 40 percent. We have doubled the mileage for our small cars and our largest cars today have mileage equal to the smallest cars we produced in 1975.

I am very pleased that on Monday when EPA announced the top fuel economy cars for the 1986 model year—and that is shown on the table, the vertical table on the right there—I am very pleased that so many of our products are represented. My purpose in sharing that table with you is really to say two things:

No. 1, from a technology standpoint, we do know how to produce very fuel-efficient cars. From a consumer choice standpoint, we recognize that if we are to compete effectively, we need offer a variety of models, all of which are very fuel efficient.

Recognizing that our future is dependent on a stable supply of fuel for our products, we have expanded our technical efforts to include the development of vehicles that are capable of operating on nonpetroleum-based fuels.

Our goal is to develop a flexible fuel vehicle which could operate on either methanol or gasoline or any mixture of these fuels, automatically, without the need of the operator to take any action.

We have also taken aggressive marketing and pricing actions to increase sales of our cars with the highest fuel economy. We have initiated about 100 such incentive programs at a cost of nearly $700 million since 1972.

As to pricing, the retail price on the base Escort with the options that are typically ordered by consumers is less today than it was in 1982. These product and technical improvements, these marketing actions on our small cars and engine and price moderations should have resulted in a CAFE exceeding today's standards. The fuel economy of Ford's average model is well above the standard.

What I tried to show on the chart, the green chart, what we have done there is year by year we have taken every model that we produced and have calculated an average for that model that does not take into account how many of each kind consumers may buy.

What that chart illustrates is that by the end of this year, by the end of the 1985 model year, our MAFE, if you will, model average fuel economy, is on the order of almost 29 miles per gallon, representing a 100-percent improvement over what it was in 1975.

On the floor there is a chart that shows CAFE, which is of course the manner in which the standard is calculated, that looks not only at what fuel economy individual models obtain, but also how many of each ones are consumers purchasing.

And there you can, notwithstanding the fact that as you go from year to year, that in each year the absolute fuel economy has increased. What we have seen in the 1983, 1984, 1985 model years is that the mix of vehicles we have been able to sell is such that instead of being 1½ miles above the standard of 29, we are roughly 1½ miles below the standard.

To offset the strong large car demand, we plan to take further marketing actions to encourage the sale of our highest fuel economy cars. The effectiveness of these actions is uncertain in the face of rapid increases in Japanese car exports to the United States that have followed the end of the voluntary restraint agreement.

We will also continue to pursue increasingly costly and uncertain technical opportunities. Nonetheless, we can foresee no way we can meet the 27.5-mile-per-gallon standard in the next several years without some drastic action, including either restriction on products or outsourcing of some of our large cars.

I would like to note several things in closing.

First, the fuel economy law does now give the manufacturers the flexibility to pay fines rather than meet the standard. In the absence of a change to the standard, we have to carry out a plan that meets the law, even at the expense of jobs, production, and consumer choice.

It is not a lack of technology or of commitment that has caused Ford to fall short of today's CAFE standards. We have made the investments, we have made the product improvements that would have met a 27.5-mile-per-gallon average if consumers were buying the cars, the mix of cars that both we and the Government had predicted.

Finally, changing the CAFE standard would have a small effect on the Nation's energy consumption. The difference in fuel consumption between the 27.5-mile-per-gallon car and a 26-mile-per-gallon car is about 20 gallons a year.

I will say that as to petroleum usage, far greater savings could be achieved by the use of alcohol blends, alcohol additives, by the introduction of a flexible fuel vehicle or a dedicated methanol vehicle into the fleet would make a much greater difference than would the difference between 27.5 and 26.

The problem with CAFE for us today is that it's out of step with the market. Congress recognized the inherent difficulty in predicting future technology applications, market preferences and energy conditions, and gave NHTSA the authority to adjust the standard within limits to reflect changed conditions and to avoid adverse consequences to the economy and the consumers.

Because the need for administrative flexibility is so clearly demonstrated in the present circumstances, we urge that Congress reject legislation that would restrict this authority. We also believe that Congress should reject legislation that would set increasingly higher CAFE standards without regard to consumer, employment, and economic consequences.

Certainly Congress could reduce auto petroleum consumption by forcing the manufacturers to produce 45-mile-per-gallon cars, but not without very substantial impact on U.S. consumers.

Let me close by saying that we believe the appropriate goal for U.S. policy is to assure that consumers have a wide variety of fuel-efficient cars from which to choose, including very high fuel economy cars. Consumers have that choice today, and auto manufacturers have the capacity to increase significantly the production of the highest fuel economy car if the energy situation should change.

Thank you.

Mr. MARKEY. Thank you very, very much.

[Testimony resumes on p. 300.]

[The prepared statement and attachment of Ms. Petrauskas follows:]

Statement of Helen O. Petrauskas
Vice President, Ford Motor Company
Before the House Committee on Energy and Commerce
Subcommittee on Energy Conservation and Power
September 19, 1985

Mr. Chairman, we appreciate the opportunity to review the progress Ford has made in improving the fuel economy of its products and to comment on the legislative proposals being considered by this committee.

From 1975 through 1985, Ford will have spent more than $14 billion to redesign its entire U.S. product lineup for improved fuel economy. Ford has met or exceeded expected technical improvements -- since 1977, the weight of the average car is down by over 1100 pounds; average engine displacement is down about 40%; we've introduced ten all-new fuel-efficient engines, including three turbo-charged versions; nine new transmissions, and exceeded government projections for rolling resistance and aerodynamic improvements. We've doubled the mileage of our small cars and our largest cars today have mileage equal to the smallest cars we produced in 1975.

Recognizing that our future is dependent on a stable supply of fuels for our products, we expanded our technical efforts to include the development of vehicles that are capable of operating on non-petroleum based fuels. Today we have more than 600 methanol-powered vehicles on the road in demonstration fleets around the world. Because widespread availability of methanol fuel is still years away, we are also developing a flexible-fuel vehicle which could solve the impasse between availability of vehicles and fuel. Our goal is a vehicle which would operate on either methanol or gasoline or any mixture of these fuels -- automatically, without the need for the operator to take any action. We are now evaluating one promising approach -- an optical fuel sensor -- and thus far, the results have been encouraging.

We have also taken aggressive marketing and pricing actions to increase sales of our cars with the highest fuel economy. Marketing support programs on small high fuel economy cars have included cash rebates, lower interest rate financing, free maintenance and warranty, and dealership cash awards. Ford has initiated nearly 100 such incentive programs, at an estimated cost of nearly $700 million since 1982. In addition, Ford has followed pricing policies that have kept the value of its small cars attractive on both an absolute basis and relative to larger cars. The retail price of the base Escort with the typical customer options is less today than in 1982.

Ford's product and technical improvements, aggressive marketing of small cars and engines, and price moderation should have resulted in a CAFE level exceeding today's standard. But circumstances beyond our control altered the consumer's purchasing decision. Instead of the $2 a gallon gasoline nearly everyone projected in the early 1980's, gasoline prices declined to today's $1.20. As a result, the demand for larger cars with improved fuel economy remained stronger than anticipated and the CAFE of Ford and others has fallen below the standard.

To offset the CAFE impact of strong large car demand, Ford plans to undertake further marketing actions to encourage the sales of its more fuel-efficient cars. But the effectiveness of these actions is uncertain in the face of the rapid increases in Japanese car exports to the U.S. that have followed the end of the voluntary restraint agreement. We also will continue to pursue increasingly costly and uncertain technical opportunties. Nevertheless, we can foresee no way to meet the 27.5 mpg standard in the next several years without some drastic action, including restrictions on production and outsourcing some of our larger cars.

Unfortunately, during the debate on the appropriateness of revising the standards, there are facts which have not been fully recognized:

1. The fuel economy law does not give manufacturers the flexibility to choose between paying fines or taking whatever steps are necessary to meet the standard. The consequence of failing to meet the standard is not a tax that a manufacturer can elect to pay; failure to meet the standards is "unlawful conduct." To us, that means that in the absence of a change to the standard, we will have to carry out a plan that meets the law even at the expense of jobs, production and consumer choice.

2. The fact that Chrysler is meeting the standard does not indicate that Ford and other manufacturers have not done their job. It is simply a matter of arithmetic. Ford and GM produce large sedans and station wagons to meet the needs of those buyers who require the functional characteristics of these larger cars; Chrysler does not.

3. It is not a lack of technology or of commitment that is causing Ford to fall short of today's CAFE standard. Ford made the investments and product improvements that would have resulted in a 27.5 mpg average if consumers were buying the mix of cars that we and the government had forecasted. For example, the average fuel economy of the models Ford produces -- without sales weighting -- has increased every year since EPCA was enacted and is presently nearly 29 mpg.

4. Changing the CAFE standard, in fact, would have a very small effect on the nation's energy consumption. Today's conditions are much different than when EPCA was enacted. Our national dependence on OPEC oil has been cut more than 75% since the peak year of 1977, to the point that OPEC oil accounts for only 9% of the nation's petroleum needs today. As new, more fuel-efficient cars have been added to the nation's fleet, fuel consumption for the average vehicle on the road has decreased substantially compared to prior years. For example, in 1984 the average vehicle consumed 19% less fuel than the average vehicle in 1977, for a comparable number of miles driven. Furthermore, while improvements in vehicle fuel economy to date have benefited consumers by reducing operating costs — more than offsetting increases in fuel prices -- we are now at the point of diminishing returns. For example, the difference in fuel consumption between a 27.5 mpg and a 26.0 mpg car is only 21 gallons per year. As to petroleum usage, far greater savings can be achieved by the use of alcohol blends or by the introduction of flexible-fuel vehicles or decicated methanol vehicles into the fleet than the very small annual difference in petroleum savings of a 26.0 mpg versus a 27.5 mpg new car fleet.

The problem with CAFE today is that the market is out of step with the standards. Fortunately, Congress recognized the inherent difficulty in predicting future technology applications, market preferences and energy conditions. It gave NHTSA the authority to adjust the CAFE standards, within limits, to reflect changed conditions and to avoid adverse consequences to the economy and consumers. NHTSA has recognized these changed circumstances in its NPRM to reset the 1986 CAFE standard. We hope that it will move promptly to finalize a rule.

Because of the need for administrative flexibility so clearly demonstrated in the present circumstances, Congress should move carefully in considering legislation that could restrict this authority. H.Res.210 would put the House on record urging a continuation of the 27.5 mpg standard and H.R.1425 would take away NHTSA's authority to reduce the standards in reponse to changed conditions. Both should be rejected as they would reduce NHTSA's ability to act in situations, like today's, where a manufacturer's CAFE has declined for reasons beyond its control.

Another proposal, H.R.1024, would set increasingly higher CAFE standards without regard to consumer, employment, and economic consequences. Congress could reduce auto petroleum consumption by forcing manufacturers to produce 45-mpg cars, but not without very substantial impacts on U.S. consumers. Not only would consumers be restricted in the size of vehicles available — probably compact-size or smaller — but, in addition, they would have to pay substantial price premiums for new technology, such as adiabatic diesel engines and continuously variable transmissions, assuming that such technologies prove feasible. Given the present projections for fuel prices, it is unlikely that consumers would be able to recover these costs in reduced operating costs over the life of the car.

We believe that legislation increasing the CAFE standards is inappropriate and unnecessary. The appropriate goal for U.S. policy is to assure that consumers have a wide variety of fuel-efficient cars from which to choose including very high fuel economy cars. Consumers have that choice today and auto manufacturers have the capacity to increase significantly the production of the highest fuel economy cars if the energy situation should change.

There is constructive CAFE legislation that this committee should consider that clearly would further U.S. energy goals. H.R.2955 would establish CAFE credits for the production of methanol or flexible-fueled vehicles. The bill could not substitute for NHTSA action to reduce the near-term CAFE standards. However, such an approach would represent a significant step forward toward EPCA's goal of reducing America's dependence on petroleum.

Responses to Questions of House Subcommittee on Energy Conservation and Power

Note: Certain related questions are grouped together and an interrelated response is provided.

Q. 1. What is your company's maximum feasible average fuel economy level for Model Year 1986, 1987, and 1988?

Q. 6. Has your company projected earning carryback/carryforward credits for Model Year 1987-1989? Please supply the Subcommittee with your projections for any credits your company may earn in these model years.

Q. 12. Will your company achieve a 27.5 mpg CAFE in Model Year 1987? 1988? 1989? 1990? If available, what is your company's projected CAFE for 1990?

A. 1. In our submissions to this Subcommittee in 1983 and 1984,
6. we provided CAFE estimates in the form of ranges reflecting
12. the many factors which can affect our CAFE levels. Ford presently estimates that its CAFE in the 1986-1990 timeframe will range from 25.9 to 27.6 mpg. By 1990, Ford believes that the 27.5 mpg standard can be achieved.

The major risks to the estimated 1986-90 CAFE levels include: 1) market risks, in light of continued strong large car demand and the rapid influx of Japanese imports that followed the end of the Voluntary Restraint Agreement (VRA); and 2) risks that new technical programs which have been started in an effort to increase CAFE will not yield the expected level of benefits.

It should be emphasized that these CAFE estimates do not include the effect on CAFE of extraordinary actions such as cancellation, restriction, or outsourcing of our full size vehicles. Also excluded are the effects of extraordinary market incentive programs. These programs historically result in pull-ahead of planned purchases and lose their effectiveness once parallel competitive programs are initiated. Without a change to the standards, Ford will be forced to implement one or more of these extraordinary measures in order to generate carryback credits to meet the estimated 0.7 mpg shortage in the 1985 model year. Without these programs, no carryback credits are expected to be generated in the 1987-89 period.

Q. 2. What are your company's projections for the price and supply of oil over the next ten years? Does your company foresee an energy crisis by the year 2000?

A. 2. For the next ten years, we project the price of oil will stabilize at approximately $27 a barrel, including a 5% annual expected inflation rate. In 1985 dollars, the 1995 price for crude oil would be about $16, or nearly 40% less than today. We expect the real price of gasoline to decline as well, but to a lesser extent, as refiner and wholesalers improve their margins.

A. 2. Ford recently has revised downward its 1985-95 projections of real crude oil prices and real gasoline prices to reflect the effects of both greater weakness in transaction prices and a reassessment of conditions, which now suggest weaker markets in the future.

It is our assessment, based on the expert opinions of others, that an energy crisis by the year 2000 is unlikely. This opinion is based, in part, on the following:

- Higher prices have increased supplies worldwide, while depressing demand. Coal supplies, coal and nuclear electrical generating capacity and ability to deliver natural gas exceed demand throughout the developed world, and favorable pricing relative to oil encourages fuel switching. Huge natural gas finds worldwide are being developed, displacing more oil. Egypt, Colombia, Oman, Yemen, Sudan, Pakistan, Syria, Ivory Coast, Angola and others have recently or are about to become net oil exporters into an already glutted oil market. As a result, OPEC exports have declined to only a third of peak export capacity.
- Present market conditions suggest that oil is overpriced relative to cost, as well as compared to other fuels, and a cost-driven price increase is unlikely in the foreseeable future. Oil is priced at about 5 times cost today, compared to 1-1/2 times in 1973. Cost of oil in the Middle East is only $1 or $2 per barrel. Even in the U.S., the average cost of finding new reserves is less than half the oil price, and oil stock prices and recent acquisitions demonstrate that Wall Street values proven reserves at only about $5 per barrel.
- Within OPEC, higher oil prices are not necessarily in the self-interest of all members, even if demand growth would support them. Saudi Arabia, UAE and Kuwait, with 100 years of proven reserves and many more years of probable reserves, are motivated to defend petroleum's market share against further encroachment by alternate fuels and conservation. To a lesser extent, this long-term interest may also apply for Venezuela, Iraq and Iran, and perhaps for Nigeria, Indonesia and Libya, although short-term need for revenue clouds their picture.

Q. 3. How much money has your company invested in CAFE compliance over the past ten years? How much money do you expect to spend over the next one, two and three years to comply with the CAFE standard? How much money would have be expended over what period to achieve the current CAFE standard of 27.5 mpg? How much is that expenditure on a per car basis, based upon current corporate sales projections?

Q. 4. Will your company pay a gas guzzler tax on any 1986 models? 1987 models? If yes, supply the Subcommittee with the model name and the estimated tax payment.

A. 3.
4. From 1975 through 1985, Ford will have spent more than $14 billion to revamp its entire U.S. production lineup. During this period Ford has met or exceeded technical improvements projected by NHTSA when

the standards were established. Since 1977, the weight of the average car is down 1100 lbs; average engine displacement is down 40%; we've introduced ten all-new fuel-efficient engines, including three turbo-charged versions; nine new transmissions, and exceeded government projections for rolling resistance and aerodynamic improvements. We've doubled the mileage of our small cars and our largest cars today have mileage equal to the smallest cars we produced in 1975.

Over the next five years we expect to spend another $8 billion which we anticipate will yield a fleet CAFE which is at or above 27.5 mpg standard by the 1990 model year. Part of this expenditure, approximately $100 million, was for the addition of electronic fuel injection, roller tappets, low friction piston rings and other improvements to our 5.0L V-8 engine. As a consequence of those and other actions, we do not anticipate that Ford vehicles will be subject to a gas guzzler tax.

Attainment of a 27.5 mpg CAFE standard in the near term would require a combination of technical and marketing actions and cancellation, restriction or outsourcing of full size cars to achieve this level -- all of which have varying costs and profit effects. The technical changes that could be accommodated in the time available without unacceptable decreases in vehicle performance or function are limited, costly, and with uncertain fuel economy benefits. Very substantial marketing incentives on the most fuel-efficient vehicles may yield but minor CAFE increases. This is because many of these programs result in pull-ahead of planned purchases and lose their effectiveness once parallel competitive programs are initiated; and because additional small car sales cannot reasonably be expected in the face of the influx of Japanese exports to the U.S. The only certain way to achieve the 27.5 mpg standard before 1990 is some drastic action on our full size cars, including cancellation, restrictions on production and/or outsourcing enough of the components to shift these vehicles to Ford's import fleet. Such actions could result in severe, and we believe unreasonable economic losses and employment disruptions.

Q. 5. Taking into account the recent EPA CAFE adjustment, what carryback/carryforward credits did your company possess after MY 1984? 1985?

A. 5. Ford's CAFE of 25.8 mpg for MY 1984 required 0.7 mpg in carryforward credits from MY 1981 to maintain compliance. Additional credits from 1981 of approximately 0.1 mpg were not needed and, therefore, expired unused in 1984. For the 1985 model year, there are available approximately 0.7 mpg in carryforward credits from the 1982 model year. No credits were generated in the 1983 and 1984 model years. The available credits will be applied to the 1985 model year CAFE but will be insufficient to offset the entire projected shortfall for 1985. The remainder of the shortfall of about 0.7 mpg must be offset by carryback credits, to be generated within the subsequent three model years.

Q. 7. Approximately how much profit does your company earn on each car line. This information may be provided within a range.

A. 7. While specific car line profit details are highly confidential, Ford's large cars are more profitable than its smaller vehicles and, in recent years, the spread in profitability has increased as Ford has restricted pricing on smaller cars in an attempt to help CAFE. The profitability of these larger cars contributes significantly to funding further fuel economy and other product improvements.

Q. 8. How many car lines has your company added and phased-out over the past five years?

a) In responding to this question, supply the Subcommittee in table form with the date/model year and the approximate fuel economy of each of these lines when they were introduced or retired.

b) Has your company delayed in retiring or phasing out any car model over the past five years? Provide the Subcommittee with any examples where the introduction or retirement of a car line was delayed, and the fuel economy of the car line.

A.8.a From 1980 through 1986, Ford will have introduced 20 new or different car lines and dropped 18. In each instance, the fuel economy of the new vehicle was improved relative to the vehicle it replaced.

Model Year	Model(s) Introduced	Estimated MPG*	Model(s) Replaced	Estimated MPG*
1980	Lincoln	18	Lincoln	14
	Mark VI	18	Mark V	14
	Thunderbird	21	Thunderbird	16
	XR-7	21	Cougar	16
1981	Escort	32	Pinto	27
	Lynx	32	Bobcat	27
	Granada	23	Granada	20
	Cougar	23	Monarch	20
1982	Continental	21	Versailles	17
	EXP	32	None	-
	LN7	32	None	-
1983	Thunderbird	23	Thunderbird	21
	Cougar	23	XR-7	21
	LTD	24	Granada	23
	Marquis	24	Cougar	23
1984	Tempo	33	Fairmont	25
	Topaz	33	Zephyr	25
	Mark VII	21	Mark VI	19
1985-1/2	Escort	34	Escort	33
	Lynx	34	Lynx	33
1986	Taurus	28	LTD	24
	Sable	28	Marquis	24

*Estimated mpg is based on Model Average Fuel Economy — a non-sales weighted average of the Metro-Highway values derived from the approved fuel economy label values for each model within a car line.

A. 8.b At one time Ford assumed that consumer demand for its family size Crown Victoria/Grand Marquis would greatly diminish because of sharply increasing fuel prices, which were projected to reach between $2.00-$2.25 per gallon in 1985. On the basis of this assumption it was projected that consumer transportation needs could be met without these vehicles, and that they would be phased out by the 1985 model year. Neither of these assumptions proved to be accurate. Gasoline prices decreased rather than increased; consumer demand for these vehicles did not drop but rather grew. In no small part, these vehicles continue to be popular because they are fuel efficient for the functions they provide -- comfortable 6-passenger seating, trailer tow capability and trunk capacity about 30% greater than that of a "mid-size" car. It is important to note that these full-size cars are as fuel efficient as the smallest car we produced in 1975.

Q. 9. What is the average curb weight of vehicles sold by your company, on an annual basis, for 1978-1985? What is your anticipated average curb weight for Model year 1986?

Q. 10. What percentage of cars sold by your company in 1985 were front-wheel drive? Had four-cylinder engines? Had six-cylinder engines?

A. 9.
10. Ford does not track sales-weighted average curb weight. A comparable measure is the sales-weighted average inertia weight which we have furnished to NHTSA. In general, changes in the inertia weight values will parallel changes in curb weight:

MY	Sales-Weighted Average Inertia Weight (lbs.)
1977	4370
1978	3885
1979	3621
1980	3263
1981	3065
1982	3048
1983	3213
1984	3190
1985	3233
1986	3300-3400

Since 1977, the weight of our average car is down by over 1100 pounds. In the past several years, the rate of improvement has slowed as a result of increased consumer demand for larger engines and cars. For example, if 1982 sales rates were applied to Ford's 1985 products the average inertia weight of these products would be 3023 pounds, nearly 50 pounds below the weight target established for Ford by NHTSA.

In the 1985 model year, 43% of all passenger cars sold by Ford were front-wheel drive, 48% were equipped with 4-cylinder engines and 22% were 6-cylinder models. Where optional engines are available, the larger engines are selected in 30-40% of the orders.

Q.11. When did your company first ascertain that it would fail to meet the 1986 CAFE standard?

A.11. In the fall of 1984, it became apparent that following shortfalls in 1984 and 1985 Ford's 1986 CAFE also would be below the standard. This shift from our earlier projections was due, in part, to our decision to designate our redesigned Escort and Lynx car lines as 1985 model year vehicles, rather than as 1986 models. This was done to improve our 1985 CAFE and reduce the need for carryback credits to cover the anticipated shortfall.

However, by late February of 1985, Ford concluded that its future model year estimates of small car sales rates were too optimistic in light of the Administration's anticipated decision not to extend the VRA. Lowering the estimates of small car sales in future model years in turn resulted in reduced CAFE levels for these years as well as reduced opportunity to earn carryback credits. It was at this point that Ford became convinced that a reduction in the CAFE standards would be necessary to maintain compliance in 1986 without extremely onerous actions.

Ford first provided data to NHTSA forecasting a 1986 MY CAFE shortfall (26.8/27.1) in its preliminary 1985 MY carryback plan. In a submission of its 1984 MY carryback plan in May, 1984, Ford had projected a 1986 MY CAFE of 28.7 mpg. Between these two dates revised projections of the influence of fuel prices, consumer demand, import market share and technical/marketing actions necessitated a downward estimate of Ford's CAFE capability.

Q. 13. With regard to information supplied to NHTSA in support of Ford's rollback petition, what projections did Ford make concerning the Escort/Lynx/EXP sales mix for the 1986 Model Year?

Q. 14. As of today, what is Ford's projected 1986 sales mix for the Escort/Lynx/EXP line? What percentage of Ford's new car sales does this line represent? Please provide the Subcommittee with the most recent sales figures for this line, supplied on a monthly basis where applicable, and compared to last year's sales level. In addition, provide the percentage of Ford's new car sales which these recent Escort line sales figures represents.

A. 13. 14. In Ford's petition to amend the CAFE standards, the sales mix for the 1986 Escort/Lynx/EXP was estimated at 19.6%. This estimate is still appropriate. The Center For Automotive Safety (CFAS) has projected erroneously a higher sales mix for these vehicles, based on some short term sales mix gains reported in the August 12, 1985 Ward's Automotive Report.

When evaluating the 1985 model year sales data shown in Attachment I the following significant factors must be considered:

- The increase in Japanese imports resulting from the lifting of the VRA first occurred in April, 1985; therefore, the January-to-April sales data, included in the CFAS numbers, were essentially not affected by increased shipments from Japan.
- The Department of Commerce and others have projected increased price competition and higher small car market share for Japanese manufacturers following the end of restraints.
- The monthly sales mix of the Escort/Lynx/EXP has been as low as 17% in 1985.
- The sales of these vehicles have been supported by expensive marketing actions which were in effect primarily in the April through June time period.
- August sales reflect the market response to a 7.7% finance incentive program. Such programs historically have a greater stimulus on small car buyers who are "price shoppers" and who otherwise may have purchased a used car.
- In May, Ford introduced the new 1985-1/2 1.9L Escort/Lynx. An initial sales surge typically occurs when a new model is introduced which is not consistent with ongoing trends.
- A review of Escort and Lynx sales over a longer period -- 16% in 1981 calendar year, and 21% in the 1982-84 years -- indicates that a 19.6% estimate is reasonable given a current Japanese share of 23% and given that the Japanese share ranged from 18.1% to 21.2% during the prior period.

Attachment I

ESCORT/LYNX/EXP

1985 MY VS. 1984 MY SALES MIX COMPARISON

	Cum. Dec.	Jan.	Feb.	March	April	May	June	July	Aug.	Cum. Total
1985 MY Sales (000)	120.1	37.6	38.7	34.8	35.8	66.9	43.4	37.3	48.5	463.1
1985 MY Sales Mix (%)	23.9	24.9	23.1	17.0	18.7	34.3	24.8	22.4	26.0	23.9
B/(W) Than 84 MY (000)	22.2	5.8	2.9	(6.6)	(1.3)	25.9	3.2	2.1	15.9	70.1
B/(W) Than 84 MY Mix Points (%)	1.1	2.1	1.4	(5.6)	(3.9)	11.3	2.4	0.8	4.1	1.4

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Mr. **Markey**. We now will turn to questions from the subcommittee, and this is a question for all three of you:

What is the maximum feasible average fuel economy level for 1986 to 1988? And have you petitioned NHTSA for that standard? Dr. Whitman?

Ms. **Whitman**. We have. That is, it is our belief that taking into account, as the law intended, that maximum feasible should include economic practicability, and taking into account what has happened to consumer demand as a result of changes in gasoline prices and gasoline availability, and the inevitable uncertainties associated with such factors, we believe that the 26 miles per gallon for which we have petitioned represents the maximum feasible as described under the law.

Mr. **Markey**. And what is it that you are requesting for 1986 to 1988 as a corporation?

Ms. **Whitman**. That the NHTSA utilize its discretion as provided for in the law to reduce the standard to 26 miles per gallon.

Mr. **Markey**. Right through 1988?

Ms. **Whitman**. For that period.

Mr. **Markey**. And Ford, what do you recommend?

Ms. **Petrauskas**. We have petitioned the agency to establish a standard of 26 miles per gallon for the period 1986 through 1989. We have submitted data and information to the agency which we believe demonstrates that the 26-mile-per-gallon standard represents a maximum feasible standard, taking into account those factors that the statute requires the agency to take into account; namely, economic practicability and technical feasibility.

Mr. **Markey**. And Chrysler?

Mr. **Sperlich**. We are happy with the standard as it exists at 27.5.

Mr. **Markey**. And what do you feel about Ford and General Motors' request that the standard be constant right through 1988?

Mr. **Sperlich**. We would be for a constant standard at 27.5.

Mr. **Markey**. A constant standard at 26, though?

Mr. **Sperlich**. We think the law was written some years back at 27.5, with a provision for anybody who failed to meet it to pay a fine, and we paid our penalty up front by showing our compliance. We have spent a fortune, money we don't have now. It's gone. We've spent it. We've taken those cars out of production to avoid paying a fine now. So we supported the law as it was written, and we are complying with it.

Mr. **Markey**. How much would it cost General Motors to comply with the law as it was originally written?

Ms. **Whitman**. You mean to meet the standard and to be fully in compliance with the law under 27.5-miles-per-gallon standards? I can't give you a dollar figure, but the fact is over the time horizon that is under discussion, there are no technological changes we could make that would enable us to do that. It is simply a matter, as we have explained, of restricting products, closing plants, restricting what we make available to consumers. That clearly would have a dollar cost to us. It clearly would have a substantial cost in terms of production and employment as well as cars, and affect adversely the competitive position of the American industry.

Mr. Markey. Mr. Sperlich, could you critique Dr. Whitman's response?

Mr. Sperlich. Only to this degree:

The standards take a lot of leadtime. We began years and years ago, as did all the other companies, and there is a lot involved, such as the technology for any given product or all the products, as well as the mix. Were I to be critical of their position, I guess I would have to point out that it wasn't Congress who told them to adopt a strategy to get small cars from the Far East. They could have invested heavily in small cars, as we are. We're going to have this new small compact at a cost of over half a million dollars in the spring. These are major investments to create products that will satisfy the market, but also give the balance required to the average on the fuel economy.

So I think, as I said, the rain fell on all of us in some ways. We either had to put the money up to meet the standard or you didn't.

Mr. Markey. Mr. Sperlich, you testified that Chrysler spent $400 million to go up 26 miles per gallon to 27.5 miles per gallon. If my calculations are correct, that's about $50 a car. Is that correct?

Mr Sperlich. Well, we are doing just a little less than 2 million vehicles a year. Are you trying to put that over 1 year?

Mr. Markey. Yes.

Mr. Sperlich. It would be about $200 a car for 1 year. Allocated over 4 years, it would be about $50.

Mr. Markey. About $50 a car.

What would it cost General Motors and Ford per car to move from 26 miles per gallon to 27.5?

Ms. Whitman. As I have said, sir, responding somewhat to what Mr. Sperlich said, General Motors in fact started its downsizing program and its increase in fuel efficiency program earlier than any of the other companies. We have spent more, not only absolutely, but also per car, in overhauling our fleet. We are now into our second complete round of downsizing and increasing fuel efficiency. And I believe that's——

Mr. Markey. How much would it cost per car?

Ms. Whitman. As I have said, there is no amount which we could spend now to use technological fixes to achieve that standard over the time period under discussion, given the current status of fuel prices and consumer choice.

Mr. Markey. So you can't do it for 1986, 1987 or 1988, no matter how much money you spent?

s. Whitman. We can do it and we will do it if forced to comply with the law, but it will involve product restrictions and plant closing and severe employment impacts.

Mr. Markey. Let me ask this: Is it possible that without any restrictions at all, or given the reduction in the price of gasoline, that there might be an absolute decline in your miles per gallon fleet average in 1987 or 1988, that you might not even be able to maintain where you are right now, if there is a decline in the cost of gasoline to the consumer?

Ms. Whitman. On a free expression basis, that clearly could happen, if there were a further decline in the price of gasoline. In terms of what we actually did and how we responded, we would have to take a clear look at what this implied in terms of compliance with the law, and what could happen to our petition at the time and decide what kinds of actions we would have to take.

But certainly it would increase the restriction and employment cost of meeting the requirement.

Ms. **Petrauskas**. If I may add to that, Mr. Chairman. I think that the question you have asked is answered to some extent by the two charts I have up there. What the two charts show is that notwithstanding the addition year by year of higher fuel economy products, notwithstanding the fact that year by year in absolute terms we are improving the fuel economy of cars; once you take into account consumer reaction to fuel prices—and that's if you look at the lower chart, that gain you get in average fuel economy gets wiped out by thousands of——

Mr. **Markey**. Could you give us a number on it, though, as Chrysler has tried to do, as to the cost per car to meet the standard?

Ms. **Petrauskas**. Let me put it this way: The $14 billion that we have spent through 1985 in terms of the technology that it developed and the production facilities it put in place physically, those production facilities exist today, they are sufficient to allow us to build a mix of cars that would meet the standard.

So in that sense I could say to you the cost of meeting 27.5 was $14 billion. Unfortunately, while we can physically build that number of cars and physically produce cars that get those kinds of high fuel economy levels, what we have been unable to do is to change the reaction that we are seeing by consumers in response to what has happened to fuel prices.

In the short term we have only one alternative, and that is to take—either curtail production or move production overseas in such a way that we are able to meet the standard.

Mr. **Markey**. Let me ask one final question, then, as the follow-up.

Ms. Petrauskas, you are aware of confidential documents filed by Ford with NHTSA from which one can deduce a per car cost for compliance with the 27.5-mile-per-gallon standard.

Without divulging any data you consider proprietary, can you at least give us the range of such costs to meet the 1987 standard?

Ms. **Petrauskas**. Mr. Chairman, maybe the best way to explain it is to say that the cost estimates we had made are the costs associated with ceasing production of our large cars. Those costs are much, much higher in terms of—you know, those costs are measured in closed plants and lost jobs, and even if they are measured in the dollar value, they are much, much higher than the cost that would be associated with paying the penalty and committing unlawful conduct. We don't believe that's an alternative that is open to us, and therefore, we have to start putting in place plans that will allow us to meet the standard, whatever the Department of Transportation or the Congress decides that standard ought to be.

Mr. **Markey**. If you were not in compliance, how much would it cost?

Ms. **Petrauskas**. My recollection is the total amount of penalties would be certainly something no more than $100 million.

Mr. **Markey**. $100 million?

Ms. **Petrauskas**. Yes. I have to say that's approximate because, of course, it all depends on what our ultimate CAFE proves to be in future model years.

Mr. **Markey**. August 2, 1985, New York Times story, "Ford plans to acquire First Nationwide Corp. for $493 million."

One of the analysts says "Ford has $5.4 billion in cash," says an analyst with Shearson-Lehmann Brothers. "It's a good way of putting that cash to work to generate a good less cyclical return."

But you're telling us that perhaps in the range of $50 a car, that might help to make your company in compliance with the fuel economy standards, that the only alternative for you, even with this kind of cash available, is to lay off workers or to do other things that are drastically contrary to the long term economic interest of the country. And I am having a hard time squaring your financial situation with what you say you have available as resources, what kind of penalty you might be able to pay, in order to keep these workers on line, even if you decide to keep the line as it is.

Ms. **Petrauskas**. If I might say, Mr. Chairman, I think in some ways Mr. Sperlich did a very good job of drawing the distinction. When Congress wanted to establish a tax on cars having a certain fuel economy, it was very clear and did so. They established a gas-guzzling tax. It is very clear that manufacturers may produce cars that are subject to that tax or not, as they choose, but then they must pay the tax.

Chrysler has decided to produce cars having those fuel economies and to pay that tax. We have decided—we have taken some actions and assured that our cars will not subject to that tax. The CAFE law, as was discussed earlier, is quite different from the gas-guzzler tax situation. The Congress made it very clear that the choice was not the manufacturer's to make. They imposed penalties but, more importantly, they prescribed the conduct that leads to the imposition of the penalty. They made that conduct unlawful, and we sort of have to take Congress at its word in that regard.

Mr. **Markey**. My time has expired.

The Chair recognizes the gentleman from Utah, Mr. Nielson.

Mr. **Nielson**. Yes; thank you.

I regret missing the testimony of Mr. Sperlich.

Mr. Sperlich, your company recently received billions of dollars in some loans backed by the Federal Government. Your company also was the first to apply for the adjustment in the 1981 standard for light trucks.

In view of that, why are you so opposed to Ford and General Motors asking for the same sort of consideration that you yourself sought in 1981?

Mr. **Sperlich**. You are talking about the light truck situation?

Mr. **Nielson**. Yes.

Mr. **Sperlich**. The light truck situation, I think, was quite a unique situation, Mr. Congressman, from the standpoint, first, as contrasted in the 10 years of lead time we have had on cars. If I recall, we were only getting 3 years of lead time, which is insufficient in this business.

As a result of that, none of the major manufacturers could meet the CAFE standards. It wasn't a case of we're all close, or one could or one couldn't. I think the fact that we all failed miserably to comply generated a conclusion of technologically not feasible, really driven by the lack of lead time we had to get there.

Mr. **Nielson**. Did Ford and General Motors have that same problem?

Mr. **Sperlich**. Yes.

Mr. **Nielson**. They therefore didn't jump on you?

Mr. **Sperlich**. It was pretty quiet at that time.

Mr. **Nielson**. Had they met the standard and you not met it, do you think they would have jumped on you?

Mr. **Sperlich**. I don't know; it's hard to say. I don't know. We don't have a mad on for these guys. But I want to make it clear, we do feel strongly——

Mr. **Nielson**. Your testimony sounds like it.

Mr. **Sperlich**. Well, maybe it does. But let me make it clear what we're mad at is the injustice, because we took this thing seriously back when we had no money. It was as important to us to meet the law and meet the market, and the challenge was to come up with a line of cars and trucks that would do that. We took it very seriously. We took very profitable cars out of production. We invested in things that perhaps had some risk to them, and we took it very seriously. We spent the money, we lost the profits by taking profitable cars out. So we paid our dues to avoid the fine. It was pay me now or pay me later. We said we'll pay it now, up front.

And it seems to us somehow unjust, since we spent our money. One could surmise that perhaps money spent some years ago with Ford and GM could have achieved the same results. They haven't spent that money, and now they want to duck the "pay me later." It just seems to us that we are at a competitive disadvantage for having spent the money and taking a lot of profitable cars out of production.

Mr. **Eckart**. Mr. Nielson, would you yield to me?

Mr. **Nielson**. Certainly.

Mr. **Eckart**. On the 3 year part, Mr. Sperlich, I beg to differ. You just said that 3 years was not enough time for you to respond in September 1979. However, in your petition to NHTSA in opposition to GM and Ford's request, you said they knew this in 1982, and thus they've had 3 years, which was "adequate time" to prepare.

How come 3 years wasn't adequate for you, but it's adequate for them?

Mr. **Sperlich**. I think the adequacy of the time in the case of the car standards is 10 years. We've known for a long time about 27.5 and, frankly, it was pretty scary when it was first laid down, but we found a way.

Mr. **Eckart**. I mean 3 years is 3 years. Three years hasn't changed. I mean it's still 365 days a year, it's still——

Mr. **Sperlich**. I think the important point I'd like to make on the light truck standard is with a very short period of time, we all tried very hard, and we all fell short, and I think it was the conclusion of the agency that that common failure suggested that there was some technological question, at least on the standard, because we were all missing by a mile. That was the point I wanted to make.

Mr. **Eckart**. Thank you.

Mr. **Nielson**. I yield to Congressman Oxley.

Mr. **Oxley**. Thank you.

In your testimony, Mr. Sperlich, you discussed the Chrysler Cordoba, which apparently was a very popular automobile and a good seller for you. I believe your testimony was that after 3 years of very successful sales, you decided to discontinue that very successful automobile as a result of your strategy. Was that your testimony?

Mr. **Sperlich**. Yes; it was.

Mr. **Oxley**. So you are telling the committee that you discontinued a very popular selling car that was making money for the corporation to comply with the CAFE standards?

Mr. **Sperlich**. We were moving from a fleet of cars whose total CAFE was not very good. Nobody's was very good. To a CAFE that would comply. It meant that we had to do a combination of new cars with certain fuel economies and get rid of old cars. And that car is an example. It came out in the process of moving from the old to new fast enough to make the CAFE standard each year. It was a victim, and it was a beautiful car, had a V-8 engine, and it would be dynamite today, in my opinion.

Mr. **Oxley**. Was that the sole reason why you discontinued that very popular automobile?

Mr. **Sperlich**. It was part of a total strategy. I can't say it was the sole reason. It was a part. We had the commitment back in 1977 that we would move the company to front wheel drive as fast as we could, and with that thrust we are about at almost 90 percent front wheel drive in our passenger cars. It was part of that thrust, but that thrust was driven, as I indicated, by a fundamental decision that said we would need to convert a very major portion of our fleet to front wheel drive in spite of its cost, to make the CAFE standard. Now we are at 87 percent front wheel drive. I think General Motors is something like 60 percent, and Ford at 30 percent. That cost a lot of money.

In that conversion process, a lot of old rear wheel drive cars, and some of them not so old, bit the dust.

Mr. **Oxley**. In other words, you've made a business decision, I guess, to discontinue a very popular automobile, which obviously is your right, as the company. I'm glad I wasn't holding stock in the company at that time. Or now, for that matter.

But if I might continue——

Mr. **Nielson**. My time is gone, but go ahead.

My time is gone, but I'll borrow some of yours in a moment.

Mr. **Oxley**. All right. If the Chairman will allow it.

Mr. **Markey**. The gentleman's time will expire at the point at which his next question is complete.

Mr. **Oxley**. Thank you, Mr. Chairman.

Mr. Sperlich, the point is that your company took a calculated risk at that point because of your situation in the market. You took a calculated risk that you would go toward the smaller car market, a more fuel efficient market, and as a matter of fact, I think that was reflected in Mr. Iacocca's autobiography—that that indeed was the strategy that you took, not so much to comply with the CAFE standards, but in fact an overall corporate strategy to attract those individuals in the marketplace who were looking for a fuel-efficient automobile, and that indeed you had a heck of a lot less to lose than your competitors to the left of you; isn't that true?

Mr. **Markey**. The gentleman's time has expired. Will the witness please try to make his answer shorter than the question?

Mr. **Sperlich**. That is not true. I was doing the bulk of the company's planning at the time, and to meet the CAFE law was simply a given in our thinking, as was meeting the market. And we had to come up with a way to do both, and we did. It cost a lot of money, but it worked out.

Mr. **Oxley**. Thank you.

Mr. **Markey**. The gentleman's time has expired.

The Chair recognizes the gentleman from Texas, Mr. Bryant.

Mr. **Bryant**. Thank you.

Dr. Whitman, the charge has been made that GM essentially ignored the fuel-economy standards in developing your product program, and that's why after 10 years you fail to meet the statutory mandated level for 1985. What is your general and specific response to that?

Ms. **Whitman**. We took the CAFE requirement very seriously. In fact, as I said before, we had actually started along those lines even before the CAFE law came in and before the first oil shock. And over the decade that's under discussion, General Motors spent some $40 billion to improve its products and the plants in which those products are produced. And we had every intention of meeting the CAFE standards.

We, too, can certainly build the mix of cars that would meet those standards, both in 1985 and in future years. What we did not anticipate, and what nobody anticipated, is that gasoline, instead of being $2.00 to $2.50 a gallon would be less than half that much, and that that would have a tremendous impact on the kinds of cars consumers wanted.

We have actually had to close plants producing smaller fuel-efficient cars because there wasn't the demand for them, so that we have never failed to take seriously—and if we get into the game of who spent the most money or who even spent the most money proportional to size, I think we will do very well, or who started sooner and who has gone further.

But the fact is that unlike Chrysler, we are and we remain a full-line producer which means we do have cars designed to meet certain needs which, although they're far more fuel efficient than they used to be, are still obviously not as fuel efficient as the smaller cars that hold fewer people or can't tow things behind them or meet a variety of other consumer needs.

It is for that reason that we, in the absence of a granting of the petition, will have to make some very unpleasant and unfortunate decisions.

Mr. **Bryant**. Well, you have petitioned for reduction of the fuel standard for 1986 and other model years. Does that mean you don't expect to achieve any increases in the fuel economy for several years?

Ms. **Whitman**. No; it doesn't, and our forecast does show us achieving an increase. But the fact is that in order to comply with the law, we must meet a standard which will enable us not only to meet the standard for any given year, but to generate sufficient credits to meet any shortfalls in previous years. And it is with that multiyear view in mind, which is clearly what the Congress had in mind when it passed the law, and even more when it passed the 1980 amendments, that we are petitioning for the 26 miles per gallon, and see that as the maximum feasible. Not because we do not expect to improve our fuel economy, which we do.

Mr. BRYANT. I'd like to ask another question. Again, what is your answer to the question that—excuse me a minute.

Mr. ECKART [presiding]. If the gentleman will suspend for a moment, we are advised that there is an unusual set of circumstances which requires a calling of the names of the roll due to the malfunction of our high-technology computer voting system. What would be the pleasure of the committee? Mr. Bryant, you have already missed your name, I am sure.

Which means you probably have 20 or 30 minutes to get over there to catch the next count.

Mr. Dingell and Mr. Eckart will have ample opportunity to catch the next roll if we proceed forthwith. Mr. Nielson and Oxley have a little time. How do you want to proceed?

Mr. NIELSON. Keep going.

Mr. ECKART. Why don't I give the Chair to you, Mr. Bryant, and Mr. Dingell and I will proceed to go vote.

Mr. DINGELL. I am always accustomed to appearing in the well at the last minute, so I face small peril here, Mr. Chairman.

The Chair can comfortably dictate my behavior without any apprehension on my attitude.

Mr. BRYANT [presiding]. Dr. Whitman, I was going to ask you to answer again why it is that you don't simply pay the fines that you would be required to pay?

Ms. WHITMAN. We feel we must have a plan to bring us into compliance, because of the fact that planning to pay a fine constitutes unlawful conduct and, therefore, we don't believe it can be part of our long-term compliance strategy.

Mr. BRYANT. Well, what does that mean? Why not? I mean truckdrivers speed on the highway and pay a fine when they get caught because they're trying to get some place in a hurry. So you take chances when you file your income tax return, a lot of companies do, and have to refile. That happens all the time. What is the difference here?

Ms. WHITMAN. I don't think one can plan to not pay one's income tax correctly either. Of course, after the fact it can happen, I suppose, given certain unforeseen circumstances that one would not be in compliance.

Mr. BRYANT. Isn't it a fact that you have already violated the law?

Ms. WHITMAN. No, sir.

Mr. BRYANT. If, as you said earlier, you don't want to be out of compliance with the law and do something unlawful, aren't you here today telling us you are in a situation where you're going to have to do something unlawful and would we please help them change the law so it won't be unlawful even though you're going to do it?

Ms. WHITMAN. No. What we have said is that in the absence of relief, we will have to put into effect a compliance strategy which will involve product restrictions and closing plants, and we have in fact filed confidential documents for such a strategy with the NHTSA.

Mr. BRYANT. You released data earlier in the week showing projects for 1987 and 1990—through 1990, to indicate that GM will exceed the standard in 1988 by five-tenths of a mile per gallon, or a half a mile per gallon, and will exceed the standard in 1989, 1990, and a lot of the projection that you will meet the standard with a comfortable cushion in 1988, and well exceed it in subsequent years—how can you state that 26 is the maximum feasible level in your request to roll back?

Ms. WHITMAN. Because that, sir, would not bring us into compliance, given the need to generate carryback credits.

Mr. BRYANT. I wish I was smart enough to ask a followup question. I think there is one to be asked.

But I don't know what it is.

I wanted to ask this of the president of the Chrysler Corp.: GM and Ford have indicated that they do not intend to produce any cars subject to the gas-guzzler tax in 1986. I understand that is not going to be true for Chrysler. Is that correct?

Mr. SPERLICH. Correct.

Mr. BRYANT. How does that square with your position here today that you are the most fuel-efficient company of the three?

Mr. SPERLICH. Our position today is that we are apparently the only one of the three who complied with the CAFE law by meeting the 27.5, and therefore we don't have to pay a penalty. And we were simply objecting if the other guys are allowed to speed, so to speak, and get off scot free. It seems like it's a wrong signal to send to the public and so forth.

In the case of the gas-guzzler legislation, we happen to have a fuel economy on that car that's 1 mile per gallon below a certain level, and that requires that we tell the public that this is a gas-guzzler, quote, unquote, at 21.5 miles per gallon. And we, Chrysler, not the customer, will pay a $500 fine to the Government. It will end up costing us probably $50 million. We're not thrilled about that, but——

Mr. DINGELL. Would the gentleman yield? There is an important difference I am trying to grasp here. You will be paying a gas-guzzler tax; is that correct?

Mr. SPERLICH. Yes, sir.

Mr. DINGELL. OK. If you were to fail to meet the mileage standard and the CAFE standard, you would be committing an illegal act; is that correct?

Mr. SPERLICH. Well, that's a matter of debate, I think.

Mr. DINGELL. Well, the law says that it shall be an illegal act. I'll read the statute.

Mr. SPERLICH. Let me tell you this. I've been working on the other end of this thing for 10 years in Detroit, and I have been assuming that we had a choice of meeting the standard or, in the event of our failure to do so, that we would have to pay a fine.

Mr. DINGELL. I want you to understand, I want to have the record correct on this. The statute says under "unlawful conduct," section 507(a):

> Subject to Subsection (b) the following conduct is unlawful: failure of the manufacturer to comply with average fuel economy standard applicable to such manufacturer under Section 502; failure of the manufacturer to comply with the average fuel economy standard applicable to the manufacturer under Section 502(b); or (3) the failure of a person (a) to comply with any provision of this part applicable to such person other than Section 502, 506, 510 or 511.

And then it goes on to say;

> (b) A manufacturer shall not be considered to have engaged in unlawful conduct or to have failed to comply with any fuel economy standard applicable to such manufacturer under Section 502 if the average fuel economy of such manufacturer, after taking account of credits then available to the manufacturer under Section 502(l) would result in the applicable standard being met or exceeded.

So we are not talking here about a tax, in the case of the gas-guzzler tax. We are talking about unlawful conduct in the case of failure to comply with the CAFE standard.

Mr. SPERLICH. What was the intention of the penalty that was described, for example, that was $100 million by Ford?

Mr. DINGELL. Rather than my quarreling with you about the intention, the language of the statute is very clear. The language of the statute indicates that the gas-guzzler tax says it's a tax. Failure to comply with the standard says it is an unlawful act, and it is a fine.

Here, let me—going on, it says;

> Civil penalty. If the average fuel economy calculations required under Section 503(b) indicate that any manufacturer has violated Section 507(a) (1) or (2), then unless further measurements of fuel economy, further calculations of average fuel economy or other information indicates there's no violation of Sectin 507(a) (1) or (2), the Secretary shall commence proceeding under paragraph 2 of this subsection. Results of such further measurements, further calculations and any such further information shall be published in the Federal Register.

So what you have under this is failure to comply subject to civil penalty.

Now counsel advises me that constitutes a fine. It is very different than a tax.

Mr. SPERLICH. It is, sir, and our counsel—I'm not a lawyer, so I couldn't be expert on this—our counsel tells us as long as the company has a plan to come into compliance in the foreseeable future, it is not unlawful for a company to pay a penalty.

Mr. DINGELL. Provided, provided, provided, however, that you carry forward or carryback credits.

Mr. SPERLICH. My people tell me they'd be happy to provide a detailed legal analysis of this point for the record.

Mr. DINGELL. Maybe we just ought to have a detailed legal analysis from all of the companies. The statute says with regard to failure to meet the standards of unlawful conduct, if you chose within the purview of your overall CAFE to produce a car which exceeds the standards which are set, then you simply pay the "gas-guzzler tax."

And here, instead of a tax, you pay a civil penalty. Now, I am not prepared to quarrel with the language of the statute, and if you feel differently, I think you ought to set forth what your feelings are.

Mr. **Sperlich**. I'm not a lawyer, Mr. Chairman, and as I indicated, we will submit a detailed legal analysis. From a practical standpoint, what I was trying to say, in answer to the question that was asked me was, we didn't try to end up having a gas-guzzler in our lineup, to pay that tax.

Mr. **Dingell**. I have no quarrel with you for doing that. But I want you to understand the technical difference between the tax, a civil penalty, and that which is clearly lawful conduct. And nowhere in the provision relative to gas guzzler tax does it say it's illegal to produce one. It just says if you produce it, you've got to pay a tax on it.

Mr. **Sperlich**. This is a point of law you're raising that I think should be examined.

Mr. **Dingell**. This is, of course, a decision for NHTSA and the courts, and really is not a decision to be made here. One of the concerns I have here is that we may well wind up with a proceeding here which is directed at affecting the judgments of NHTSA, which I would regard as being clearly an improper action by this subcommittee.

I thank you for yielding.

Mr. **Bryant**. One last question. Chrysler says you are falling behind in implementing the technologies for fuel efficiency and that's why you can't meet the standard. How does fuel economy of GM's products compare with other automobile manufacturers?

Ms. **Whitman**. Well, the fact is that if we had Chrysler's mix in terms of designated categories, we would not only meet the standard, we would be about a mile per gallon, I believe, ahead of them. And in those product categories where in fact we compete directly, General Motors has the more fuel efficient car in the vast majority of cases. I think in almost all of them, although not quite.

That is, if one compares like to like, there's no question that our technology is second to none.

Mr. **Bryant**. If you take the vans and the trucks that are not included right now, but included them in the CAFE standard, would you meet the CAFE standards at Chrysler?

Mr. **Sperlich**. You're talking about a minivan?

Mr. **Bryant**. Well, yes, your vans and your trucks.

Mr. **Sperlich**. Our minivan is a multipurpose vehicle and happens to be included under the legislation applying to light trucks. But if you included the minivan as a car, we would comply with the CAFE law.

Mr. **Bryant**. Does that contradict what you said?

Ms. **Whitman**. No. In fact, as I understand it, if they include it as a car, they meet the car standard, but not the truck standard. But in fact, it does not in any case contradict what I said.

Mr. **Bryant**. My time has expired.

The gentleman from Ohio.

Mr. **Oxley**. Thank you, Mr. Chairman.

Mr. Sperlich, Chrysler suggested all along that GM and Ford either comply or pay their fines. I'd like to ask for your comments on the following statement:

> We are appalled that a government agency would suggest that a truck manufacturer could knowingly violate the regulation as a matter of policy, or that a manu-

> facturer could consider a fine and violation as a matter of policy of a federal regulation as a routine cost. We think that will be completely unacceptable behavior.

Does that statement reflect a correct conclusion on the question of paying fines, in your estimation?

Mr. **Sperlich**. There is a legal point that was raised by the chairman, but——

Mr. **Oxley**. This is a policy question, not a legal question.

Mr. **Sperlich**. I'm not sure I entirely understand what you're asking, but let me try it.

My presumption as an operating man in Detroit, leaving aside whether we have legal classification of taxes or fines under legislation, was that if we failed to produce a fleet that averaged 27.5, that we would end up paying a fine as specified in that legislation. If we failed to meet the gas-guzzler law requirements, we would end up paying a tax in that instance.

Also I was operating on the presumption that there's a penalty in both cases for noncompliance.

I am not sure I answered your question.

Mr. **Oxley**. Let me follow that up with a second quote from the statement which you recognize, I am sure, as part of Chrysler's testimony before NHTSA in January 1978, at that time trying to justify your request for reduction of a light truck CAFE standard. The statement goes on:

> Chrysler does not intend to produce a fleet of vehicles that does not meet the requirements of the law. If somebody wants to tell us different, we should violate the law and pay a fine and tell us to do it, but we don't think this is the thing to do now. Any standard which would require us to violate it and pay a civil penalty for the violation is unreasonable and does not meet the intentions of Congress and should be changed.

Has Chrysler changed its attitude in that regard since 1978?

Mr. **Sperlich**. That was a quote from the hearings on getting relief in the light truck case?

Mr. **Oxley**. That is correct.

Mr. **Sperlich**. I am not familiar with that quote, but our intent there was to present evidence that the standard was technologically unfeasible, since none of us could come close to meeting it, which I think is a different situation than we have here.

Mr. **Oxley**. Thank you, Mr. Chairman.

Mr. **Bryant**. The gentleman from Michigan.

Mr. **Dingell**. Thank you, Mr. Chairman.

I am vastly distressed to see my friends in the industry be at war with each other over this matter. I am not prepared to apportion blame or to deal with this matter in that fashion, but I do counsel my colleagues to look with a great deal of care to see what the issues are here, and to ascertain whether in fact this hearing will impact on a decision to be made by a regulatory agency, will be used by persons of known unfriendliness to the industry for their purposes, or whether or not the consequences of this hearing will have other consequences of an economic character in terms of moving U.S. jobs overseas.

I am not prepared to justify either the economics or the judgments which have been made under earlier economics by any party at the witness table before us. But I am prepared to observe that there have been startling changes since the market was used as a basis of first fixing the 27.5 mile per gallon standard; and second, to observe that buyer preferences have responded to that situation. And I am prepared to observe that the consequences, not just to my district but to other congressional districts, movement of jobs overseas, can be severely hurtful. And I would anticipate small prospect if we were to move jobs overseas that those will return to the United States at any early time, if ever.

I would observe, Mr. Chairman, one other thing which I think is very important to each and all of us. The automobile is the largest consumer of steel, rubber, glass, textiles, and the largest user of computers in this country. And for those who might calmly look at me and say, "Pardon me, Dingell, but your end of this lifeboat is sinking," I would simply observe they will go down with me at exactly the same time, and that the injury to manufacturers and employers in my district will shortly be reflected in injury to manufacturers and workers in their districts.

I would hope that my colleagues would, in their consideration of this matter, take a careful look at all parts of this legislation, including the economic practicability in the light of the current knowledge which we have on energy costs, and energy costs as they lie in the future, and that we would address these questions with a rather more careful attention to detail and fact than one witness before this committee who made the sweeping observation that I was an expert on gun control, for which I thank him, but whose relevancy I doubt.

I would observe that Congress did give broad discretion at the time that we wrote the original statute—and I was one of the writers of it, and chairman of the subcommittee which wrote it, and the manager of the legislation on the floor—broad discretion to NHTSA to arrive at certain judgments with regard to the fixing of mileage standards at the time that the 1985 period arrived at hand. And we afforded the authority to parties to any such proceeding to submit records, books, documents, testimony to that for the purposes of arriving at the judgment that would be exercised by NHTSA relying upon a record.

I would think that NHTSA should proceed to consider all of the questions that are appropriate in this action, including that of economic practicability, which is clearly one of the decisions that will be made.

To my good friends at Chrysler, I would observe when you have had trouble, I have always sought to help you, as you very well recall. With regard to the light truck matter, with regard to the loans and so forth, and the guarantees that were made possible to continue you in existence.

I have had similar interest in connection with the other employers in my district, not only the auto industry, and I intend to continue that. I view my responsibility down here as looking not only to the welfare of my employers, but to the welfare of my employees, and with special emphasis on employees, and I intend to do nothing which would send U.S. jobs overseas, and to permit nothing to transpire which would send U.S. jobs overseas. I hope that this committee will look at the evidence with a great deal of care, and will be more interested in the testimony of those most closely involved in providing employment in this country, rather than those who might have an interest in some esoteric concern for "consumers" from whom they are deriving a rather splendid living, too.

And with those remarks, Mr. Chairman, I hope that the record will be fair and the participation of my colleagues will be up to the character that we always expect of this committee, and that our behavior in procuring books, papers, documents will provide the necessary records which are required, but also the fair compliance with the duties of Congress to be fair to all parties, and also to see to it that books and records do not divulge matters without the very best of need which might be of special concern to industries whose well-being in this proceeding in good part lies in the hands of the membership of this committee, the chairman and the staff.

With those remarks, I thank you, and I have no questions.

Mr. BRYANT. The Chair would ask the indulgence of this panel and the one to follow in remaining here while we go and cast our vote, until the chairman, Mr. Markey, returns to resume the meeting. And with that, the committee will be in recess until the return of the chairman.

[Brief recess.]

Mr. MARKEY. I apologize very much for the delay. The machine on the floor is broken, so all 435 Members have to wait for their names to be called to vote one at a time, and as they say, it's a long way from Addabbo to Zablocki. It takes about 45 or 50 minutes to do it orally, rather than by an electronic voting device that's going to be a little bit confusing for the next 15 or 20 minutes, because each Member will have to wait for his letter to come by again before they can vote.

The members will be returning here, but on a pretty staggered schedule.

I would like to ask a few more questions and then dismiss this panel and move on to the concluding one. The question I would like to pose, and that is to all three members of the panel, is whether or not your company held on to old technology cars after replacements had ostensibly been introduced, and if so, why?

Ms. PETRAUSKAS. May I go first, Mr. Chairman?

On behalf of Ford, I think we can say unequivocally that we have not hung on to old technology, and, in fact, as I mentioned in my testimony earlier, just this year, for the 1986 model year, we've spent about $100 million in order to improve the fuel economy of just our eight-cylinder engine.

Mr. MARKEY. Have you hung on to any of the rear-drive cars?

Ms. PETRAUSKAS. We have cars in our product offering that are rear drive. I might add that some of those cars carry six people and have luggage room and can tow a trailer, yet their fuel economy is better than the fuel economy of the smallest car we built in 1975. So there have been very significant increases in the fuel economy of those cars. And, of course, that is something that we think is pretty important to our customers in the sense that if someone decides that what they need is a car that's capable of, say, trailer towing, they, other things being equal, are likely to choose the car that gives them the best fuel economy, and that's why we have had the incentive to improve the fuel economy of those cars.

Mr. **Markey**. I don't think there is anybody who is opposed to big cars. That's not anything in contention here. It's just that we need fuel-efficient big cars. Perhaps we don't need quite so many of them as we have, but we do need to concede that there will be, continue to be, and perhaps should be that option for Americans.

What we are asking is whether or not, you know, it makes sense for you as a corporation in trying to meet the standards that were set down by law to switch over your fleet to front-wheel drive for the vast bulk of your fleet, in attempts to try to meet the standard, recognizing that some cars should retain the old rear-wheel drive if they need some additional power, but for the most part, a person just wants a car, and they don't really care where the drive comes from, as long as the automotive engineering is sound.

Ms. **Petrauskas**. One of the big disappointments, of course, for us, Mr. Chairman, has been the consumer reaction recently to diesels. You know, we had in our product offering optional diesel engines which would take a full-size car and give it a fuel economy rating above the standard. Unfortunately, the demand for those diesels, which was projected to be something on the order of 15 to 20 percent—it was projected that they would make up that much of the product line in this model year. I believe we're seeing demand running something on the order of less than 1 percent.

Mr. **Markey**. Does front-wheel drive get better mileage than rear-wheel drive?

Ms. **Petrauskas**. I guess you almost have to say it would vary depending on the kind of—I mean, it depends on which car.

Mr. **Markey**. Mr. Sperlich?

Mr. **Sperlich**. Everything else being equal, it will, because with front-wheel drive, for a given amount of passenger space and a given amount of luggage space, you can make a smaller, more compact, lighter car, and therefore all things being equal, it will be a more fuel-efficient car.

Mr. **Markey**. What percentage of your fleet is rear-wheel drive?

Mr. **Sperlich**. Eighty-seven percent.

Mr. **Markey**. Front-wheel drive?

Mr. **Sperlich**. Yes.

Mr. **Markey**. How does your fleet break down?

Ms. **Whitman**. About 60 percent front-wheel drive.

Ms. **Petrauskas**. Between 43 and 45 percent of our fleet.

Mr. **Markey**. Do you have a corporate plan in place to increase that percentage?

Ms. **Petrauskas**. I expect that percentage will increase. For example, we are introducing some cars this fall which are front-wheel drive cars and will cause that percentage to go up in total. We expect to spend about $8 billion over the next several years. All of that money will be dedicated to taking product actions which are going to raise the fuel economy of our cars, and it's a variety of actions, I might add, not simply front-wheel drive.

Mr. **Markey**. In the area of V-8 engines, what percentage of your fleet has the V-8 engines?

Ms. **Petrauskas**. I'll have to reconstruct that. I think our 4-cylinder engines run around 40 percent, I would guess. Our 6-cylinders are another 20 percent. So whatever is left over.

Mr. **Markey**. So 40 percent, 50 percent?

Ms. **Petrauskas**. No. I'm sorry. That's too high. It's less than that. If I may, Mr. Chairman, I could provide that for the record.

Mr. **Markey**. Do you have that, Dr. Whitman?

Ms. **Whitman**. We can provide the exact percentage for the record, but as I recall, it's in the range of 30 percent or perhaps a percentage point or so above that.

Ms. **Petrauskas**. Mr. Chairman, I found the number. It's 48 percent are 4-cylinders, 22 percent are 6-cylinders. If I did my arithmetic right, that adds up to 70.

Mr. **Markey**. About the same as for General Motors. And what percentage at Chrysler is V-8?

Mr. **Sperlich**. I believe it's just over 10 percent.

Mr. **Markey**. Just over 10 percent. There is no question that a V-8 is less fuel-efficient than a smaller engine; would you agree with that?

Ms. **Whitman**. Well, in an absolute sense, yes. But it also depends on what it's being used for. You know, it may serve quite different purposes.

May I, Mr. Chairman, respond briefly to the question you asked originally, having to do with the retention of cars?

We do have some larger rear-wheel drive cars in our fleet which frankly, if oil prices had gotten to the levels that were foreseen 4 or 5 years ago, would very probably have disappeared because consumer demand for them would not have been sufficient. It is because of the fact there is still consumer demand for those cars, quite frankly, that we are able to employ as many people as we do, and that we have been able to recall as many people as we have. And a substantial part of what we would be forced to do in order to come into compliance if we were not granted relief would be simply to restrict availability of those cars with the kind of employment effects I've already noted.

Mr. **Markey**. What percentage of the consuming public, though, walks into a showroom and asks for a rear-wheel drive car? I mean, I don't consider myself to be anything more or less than an average consumer, and it has never been one of the—I mean, in terms of my preferences, once you get by an AM/FM radio and air conditioning or whatever, but to get into the engineering of whether or not it's front or rear-wheel is something that is not within the ordinary knowledge or interest of the average consumer.

I'm not saying that 5 or 10 percent of the consuming public might have any knowledge of it, but it just doesn't seem to me to be a driving a force in terms of the preferences or tastes of Americans in their choice of automobiles.

Ms. **Whitman**. I'm not a marketing expert, but I suspect you're right. But that's not the point. The point is that as we introduce new generations of vehicles, their whole combination of characteristics are somewhat different from those of the generation that they replace. And it is not, in the best judgment of our marketing experts—and as I say, I'm not one—they do not foresee that it is possible at the current state of oil prices and consumer demand and so forth, that one can generate enough additional demand for other vehicles to fully compensate for having to restrict production of the kind of rear-wheel drive vehicles I'm talking about.

Mr. **Markey**. In your large car fleet, what percentage of your large car fleet is V-8 and rear-wheel drive?

Ms. **Whitman**. I'm afraid when we get to that level of detail, I will have to submit that for the record.

[The following response was received:]

For the 1986 model year, General Motors projects that 41 percent of our large cars, including station wagons, will have V-8 engines and 35 percent will utilize rear-wheel drive.

(For purposes of answering this question, we use the EPA classifications for cars. Under this classification system, large cars are those which provide more than 120 cubic feet of combined interior and trunk space, and large station wagons are those which provide more than 160 cubic feet of combined space).

Mr. **Markey**. Mr. Sperlich, do you have any idea, just in terms of the comparison of your fleets?

Mr. **Sperlich**. I'd have to submit an exact figure. But as one of our strategies, we have a rear-wheel drive V-8 car for some residual demand. We also did a four-cylinder turbocharge car in the full-size car market. Between the two, I think their mix is about 60/40, with the larger car being 60 and the other being 40.

Mr. **Markey**. The distinguished chairman of the full committee has provided his view of the distinction between a civil fine to penalize unlawful conduct and a tax such as is provided in the gas-guzzler provision.

For the record, let me elaborate that the statute does not equate the term "unlawful" with a statutory mandate to stop production. The statute provides a penalty for such unlawful conduct, namely a civil penalty.

At this time, I will insert in the record a legal memorandum provided to the subcommittee by the Library of Congress which concludes that there is no statutory mandate to stop production for noncompliance with the CAFE standards.

[Testimony resumes on p. 337.]

[The information follows:]

Congressional Research Service
The Library of Congress

Washington, D.C. 20540

September 4, 1985

To: House Energy/Commerce Comm.
Energy Conservation/Power Subcommittee
Attention: Gerry Waldron

From: American Law Division

Subject: Penalties for and Potential Consequences of Noncompliance with Automobile Fuel Economy Standards

This memorandum addresses questions raised in Mr. Markey's letter of August 21, 1985 with respect to the automobile fuel economy standards program and the penalties for noncompliance by automobile manufacturers. A separate memorandum discusses the effect of the Supreme Court's decision invalidating the legislative veto in INS v. Chadha on the veto provision in the Motor Vehicle Information and Cost Savings Act.

I.

Title V of the Motor Vehicle Information and Cost Savings Act, added by the Energy Policy and Conservation Act of 1975, 89 Stat. 871, 901, established fuel economy standards for automobiles for model years 1978-80, authorized the Secretary of Transportation to set standards for years 1981-1984, and set the standard for model year 1985 and thereafter at 27.5 miles per gallon. 15 U.S.C. 2002. The Secretary may amend the 1985 and after standard in accordance with statutory criteria and procedures. 15 U.S.C. 2002(a)(4). The fuel economy standards apply to a manufacturer's fleet of automobiles, thus they have become known as corporate average fuel economy (CAFE) standards.

The Act declares that noncompliance with the CAFE standards is "unlawful" and prescribes civil penalties to be imposed on violators by the Secretary. The penalties are based on the number of tenths of a mile per gallon the manufacturer is short of the CAFE standard for a particular year and the number of vehicles manufactured that year. A system of credits for past or subsequent years in which the CAFE standards have been exceeded is available to offset a civil penalty. 15 U.S.C. 2007, 2008.

Two questions have been posed:

(1) Does the Act prohibit the sale of vehicles that do not meet the CAFE standard or may manufacturers continue to sell a noncomplying mix of vehicles, pay the penalty, and establish a plan for future compliance?

(2) What is the risk of a shareholder derivative suit that would compel the auto manufacturer to halt production of cars not in compliance with the CAFE standards?

II.

The Act declares that failure to comply with the CAFE standards is "unlawful." 15 U.S.C. 2007(a). The Secretary is directed to commence civil penalty proceedings in cases of violation of the standards. 15 U.S.C. 2008(a). A system of credits (based on past or projected future years in which the standards were or will be exceeded by the manufacturer) is available to bring a manufacturer into compliance in a given year or reduce the penalty for noncompliance. 15 U.S.C. 2007(b), 2008(b). The Secretary may also modify or remit a penalty and may also impose a higher penalty under certain circumstances. 15 U.S.C. 2008(b)(3), (d). Interested persons may obtain judicial review of the Secretary's actions with respect to a penalty; they may also participate in the agency proceeding on the assessment of the penalty. 15 U.S.C. 2008(a)(2), (c).

The civil penalty provisions were part of a "carefully drafted" regulatory program. H. Rept. No. 94-340, 94th Cong., 1st Sess. 87 (1975). Earlier bills had contained other penalty provisions and sanctions and the bill that passed the Senate in 1973 (only to die in the House) provided for a full panoply of remedies for violation of the standards -- secretarial injunction against manufacture of noncomplying vehicles, impoundment of such vehicles, and civil and criminal penalties. See, S. Rept. No. 93-526, 93rd Cong., 1st Sess. 51, 125-6 (1973) (S. 2176); 119 Cong. Rec. 40397-8, 40446, 40453 (1973). For a general description of the rather involved odyssey of the fuel economy standards legislation, see, Center for Auto Safety v. National Highway Traffic Safety, 710 F. 2d 842, 849 n. 2 (D.C. Cir. 1983) (MacKinnon, J. concurring).

The following year, an "alternative approach to the means of regulation" was developed in the Senate. That approach replaced the remedial provisions of the 1973 bill with the civil penalty mechanism. See, Hearings on Energy Conservation Working Paper Before the Senate Commerce Committee, 93d Cong., 2d Sess. 1, 16. The Administrator of the Federal Energy Administration testified in favor of the new approach, noting that "[a] civil penalty makes enforcement easier and more likely than the alternate scheme of shutting down production." Hearings 41. The bill reported to the Senate in 1975 contained only the civil penalty provision. S. Rept. No. 94-179, 94th Cong., 1st Sess. 43 (1975).

The House bill in 1975 also contained a civil penalty mechanism. Thus, "a manufacturer which failed to meet an applicable average fuel economy standard in a model year would not be prohibited from selling automobiles in violation of the standard; he would, instead, be subject to a graduated civil penalty for each automobile he produced in that year." H. Rept. No. 94-340, 94th

Cong., 1st Sess. 93 (1975). An amendment offered during House debate on the bill that would have authorized the Attorney General to seek injunctive relief against noncomplying manufacturers was defeated. 121 Cong. Rec. 18698-18700 (June 12, 1975). It was made clear during that debate -- which focused specifically on the appropriate remedial mechanisms for the program — that the civil penalty provision ultimately adopted did not prohibit the sale of noncomplying automobiles nor mandate a halt in production by the offending manufacturer. 121 Cong. Rec. 18702-18703 (remarks of Rep. Ottinger, Eckhardt, Sharp).

The conference report on the bill did not discuss the penalty provision other than to describe it. S. Rept. No. 94-516, 94th Cong., 1st Sess. 45 et seq. (1975). The conferees did change the language of the violation provision, declaring that noncompliance with the CAFE standards was to be "unlawful". S. Rept. No. 94-516 at 45. Both the House and Senate-passed bills had provided that such conduct was "prohibited". See, H. Rept. No. 94-340 at 273-4; S. Rept. No. 94-179 at 43. The term "prohibited" would seem to have a more injunctive or restraining connotation than "unlawful". The change in terminology may have been thought to be more consistent with the civil penalty remedial structure that was ultimately adopted, a structure that declared certain conduct to be not in accordance with law but did not provide that such conduct could be enjoined. The conference report, however, is silent on this point and it does not appear to have been raised in debate on the report.

Subsequent congressional action would also seem to confirm that the Act does not envision the halting of production as an available remedy for noncompliance with the CAFE standards. The Act permits manufacturers to carry back or carry forward credits earned for exceeding the standards and applying them to model years in which they had been or will be in noncompliance. The original period was one year back or forward. The act was amended in 1980 to expand the period of time in which credits could be used to three model years back or forward. See, 15 U.S.C. 2002(1), 2007(b). The amendment was urged by the Department of Transportation, whose report was submitted to Congress and referred to in the amendment's legislative history. In that report, the Secretary stated that "[t]he provisions under section 508 of the statute now impose a penalty of manufacturers who fall below the specified standards, although it does not prohibit the sale of cars in such a situation." Hearings on Automotive Average Fuel Economy Standards Before the Subcommittee on Energy and Power of House Committee on Interstate and Foreign Commerce, 96th Cong., 2d Sess. 29 (1980). See also, H. Rept. No. 96-1026, 96th Cong., 2d Sess. 11 (1980) (quoting portions of DOT report on proposed amendment). Thus, the agency with jurisdiction to implement the Act disclaimed any injunctive aspect to the penalty provisions of the Act and that view was presented to Congress apparently without objection.

The carry back and carry forward credit mechanism -- expanded in 1980 -- would also indicate that an inability to meet the CAFE standards in a particular model year does not dictate that production be halted. Credits earned for exceeding the standard can be applied to bring a prior year's automobile fleet into compliance with the Act. A manufacturer may also avoid imposition of a penalty for a particular year's noncompliance if it submits a plan to earn sufficient credits (exceed the CAFE standards) in the subsequent three model years. 15 U.S.C. 2002(1)(1)(c). Thus, the structure of the Act permits continued manufacture even if the CAFE standards are not met in a particular model year.

In conclusion, nothing in the Act dictates that production be halted if the CAFE standards are not met. The legislative history of the original Act and its 1980 amendment evince an understanding on the part of Congress and the implementing agency that its "carefully drafted" remedial scheme provides for civil penalties only and does not contemplate that production be halted upon non-compliance. Of course, the Act does not forbid a manufacturer from deciding to halt or cut back production to avoid penalties. Its design, however, was intended to make clear that noncompliance was to occasion civil penalties only and that a halt in sales was neither dictated nor desired.

III.

With respect to the risk of shareholder derivative suits as a result of a manufacturer's noncompliance with the CAFE standards, we are enclosing a previously prepared memorandum that addresses that question. Liability of Directors of Automobile Manufacturing Concerns for Civil Penalties Incurred for Non-compliance with Federal Automobile Fuel Economy Standards, May 16, 1985. That memorandum discusses shareholder derivative suits in general and assesses the possibility and likely success of such suits in the context of noncompliance with the CAFE standards. One conclusion of the memorandum is that "the legal concept of the business judgment rule would offer a significant defense to directors of an automobile manufacturing concern faced with a derivative action based upon non-compliance with federal fuel economy standards". Memorandum at 12.

Richard Ehlke

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September 4, 1985

Congressional Research Service
The Library of Congress

Washington, D.C. 20540

May 16, 1985

To:

From: American Law Division

Subject: Liability of Directors of Automobile Manufacturing Concerns For Civil Penalties Incurred for Non-compliance with Federal Automobile Fuel Economy Standards

This will respond to your inquiry and our conversations regarding possible liability of directors of automobile manufacturing concerns for penalties incurred for non-compliance with federal fuel economy standards. Specifically, you have asked whether personal liability on the part of such directors might arise through a derivative suit brought by shareholders of the corporation.

Automobile Fuel Economy Standards

As you know, Congress has established federal fuel economy standards that require domestic manufacturers of certain classes of passenger automobiles to achieve for all covered vehicles specified average fuel economy standards.[1] The statutory specification of the average fuel economy standard in miles per gallon began in 1978 with increasing mileage requirements through 1980. Thereafter, the Secretary of Transportation was given discretion to determine, and did establish, certain standards with the involvement of Congress in a manner specified that is not of concern here.[2] The statute specifies the

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1/ See, 15 U.S. Code Section 2001 et seq.

2/ See, 15 U.S.Code Section 2002.

average fuel economy standard at 27.5 miles per gallon for 1985 and years thereafter.[3]

The failure of any covered manufacturer to comply with the federal fuel economy standards constitutes unlawful conduct[4] that is subject to extensive civil penalties.[5] Among the possible civil penalties is a penalty calculated "...by multiplying $5 by...the number of tenths of a mile per gallon by which the average fuel economy of the passenger automobiles manufactured by such manufacturer during such model year is exceeded by the applicable average fuel economy standard established under section 2002(a) and (c) of this title, multiplied by the number of passenger automobiles manufactured by such manufacturer during such model year..." reduced by certain credits allowed under the statute.[6] In addition, certain civil penalties may be imposed of not more than $10,000 for each violation, with each day constituting a separate violation.[7]

It is with regard to these civil penalties for violations of the fuel economy standards that your question arises.

Derivative Suits

Among the rights developed at Common Law for the protection of a shareholder's ownership interest in a corporation is the right to bring a so-called "derivative suit" on behalf of a corporation alleging certain wrongdoing impairing the value of his shares in the corporation. Derivative suits are often brought against corporate insiders—directors or officers owing special duties of fiduciary responsibility to the corporation. The nature of derivative suits has been generally summarized as follows:

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[3] 15 U.S.Code Section 2002(a)(1).

[4] 15 U.S.Code Sectin 2007.

[5] 15 U.S.Code Section 2008.

[6] 15 U.S.Code Section 2008(b)(1)(A).

[7] See, 15 U.S.Code Section 2008(b)(2).

> Equity developed the derivative suit so that the shareholder "derivatively" or "secondarily" could enforce a corporate right against insiders or outsiders, where those in control of the corporation refused to have the corporation sue directly, and thereby protect the whole community of corporate interests—creditors and shareholders, including his own investment in the corporation. The plaintiff-shareholder in effect sues as guardian ad litem for the corporation, which although the real party plaintiff, is brought into the litigation as a nominal party defendant. The derivative suit, because of its procedural development is equitable in nature and besides often involves equitable issues of breach of fiduciary duty but can involve law issues of due care. While the derivative suit serves a useful purpose, it is susceptible to abuse by "strike suits" when brought by small shareholders and their attorneys to gain private settlement and self-enrichment. Misuses of the derivative remedy led to various restrictions being placed upon it by statutes, rules of practice, and increased judicial recognition of the plaintiff-shareholder as guardian ad litem for the corporation.8/

Thus, under what are now extensively defined state statutory procedures, shareholders may bring derivative suits on behalf of the corporation, for example, against directors of the corporation because of a breach of a legal duty owed to the corporation by the directors.

Your specific question is whether or not a suit in the form of a derivative action could be brought by a shareholder against the directors of a corporation for damages to the corporation arising from civil penalties for violation of the fuel economy standards. Underlying your question is the further question of what, if any, legal duties does a director of an automobile manufacturer owe to the corporation or its shareholders to avoid violation of the fuel economy standards and, perhaps more importantly, to avoid corporate liability for the payment of penalties for such violations.

8/ Henn, Harry G., Corporations (West Publishing Co. 1961).

These questions raise legal issues that appear to be novel and not readily answered on the basis of the direct application of controlling judicial precedent.

The Business Judgment Rule

As a general matter the courts are reluctant to interfere with the internal management of a corporation in a way that would substitute their judgments concerning management for the sound business judgment of corporate management. The so-called "business judgment rule" is a judicially developed doctrine that recognizes the legal need to defer to the business judgment of corporate directors and officers. It has been generally defined as follows:

> The "business judgment" rule sustains corporate transactions and immunizes management from liability where the transaction is within the powers of the corporation (intra vires) and the authority of management, and involves the exercise of due care and compliance with applicable fiduciary duties.9/

As articulated by Mr. Justice Brandeis in *United Copper Securities Co. v. Amalgamated Copper Co.*,10/ with regard to a decision of directors not to bring an antitrust suit against a third party:

> Whether or not a corporation shall seek to enforce in the courts a cause of action for damages is, like other business questions, ordinarily a matter of internal management, and is left to the discretion of the directors, in the absence of instruction by vote of the stockholders. Courts interfere seldom to control such discretion intra vires the corporation, except where the directors are guilty of misconduct equivalent to a breach of

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9/ Henn, *supra*, at 364.

10/ 244 U.S. 261, at 263-264 (1917). *Ashwander v. Tennessee Valley Authority*, 297 U.S. 288 (1936), is often cited for the notion that it is enough for shareholders to show a breach of trust or duty in order to prevail in a derivative suit. But as Justice Brandeis observed there, at 343: "[i]f a stockholder could compel the officer to enforce every legal right, courts instead of chosen officers, would be the arbiters of the corporation's fate."

> trust, or where they stand in a dual relations which prevents an unprejudiced exercise of judgment...

In a somewhat broader definition of the business judgment rule, the Supreme Court of Delaware observed in Sinclair Oil Corporation v. Levien:[11]

> A board of directors enjoys a presumption of sound business judgment, and its decisions will not be disturbed if they can be attributed to any rational business purpose. A court under such circumstances will not substitute its own notion of what is or is not sound business judgment.

Nevertheless, the deference accorded to management under the business judgment rule is not total. In the recent decision, Aronson v. Lewis, of the Supreme Court of Delaware, these important observations were made:

> Moreover, a stockholder is not powerless to challenge director action which results in harm to the corporation. The machinery of corporate democracy and the derivative suit are potent tools to redress the conduct of a torpid or unfaithful management. The derivative action developed in equity to enable shareholders to sue in the corporation's name where those in control of the company refused to assert a claim belonging to it. The nature of the action is two-fold. First, it is the equivalent of a suit by the shareholders to compel the corporation to sue. Second, it is a suit by the corporation, asserted by the shareholders on its behalf, against those liable to it.
>
> By its very nature the derivative action impinges on the managerial freedom of directors.
>
> * * *
>
> [T]o invoke the [business judgment] rule's protection directors have a duty to inform themselves, prior to making a business decision, of all material information reasonably available to them. Having become so informed, they must then act with requisite care in the discharge of their duties. While the Delaware cases use a variety of terms to describe the applicable standard of care, our analysis satisfies us that under the business judgment rule director liability is predicated upon concepts of gross negligence.
>
> However, it should be noted that the business judgment rule operates only in the context of director action. Technically speaking, it has no role where directors have either abdicated their functions, or absent a conscious decision, failed to act. But it also follows that under applicable principles, a conscious decision to refrain from acting may nonetheless be a

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[11] 280 A.2d 717, 720 (1971).

> valid exercise of business judgment and enjoy the protections of the rule. (footnotes and references deleted)12/

Thus, the traditional view is that the business judgment rule will protect corporate directors except where their actions involve gross negligence. However, the business judgment rule has recently undergone further judicial scrutiny that has generated debate over whether a trend has begun to retreat from the broad immunity the rule accords corporate management.13/

In Smith v. Van Gorkom,14/ the Supreme Court of Delaware found the directors of a corporation liable for damages to the corporation because of their failure to make an informed business decision concerning the price at which the corporation would be sold in a merger arrangement with another company. In effect the directors voted to "sell" the corporation too cheaply without having before them adequate information regarding the intrinsic value of the company. The Court found, in applying the gross negligence standard of Aaron v. Lewis, supra, that such action did not constitute a proper exercise of the business judgment.

While the existing gross negligence standard was applied, the Court in Van Gorkom seemed to be requiring more significant investigation and information before the directors could avail themselves of the protections of the business judgment rule. In effect, the failure to seek information was deemed to be

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12/ 473 A.2d 805, 811-813 (Del. 1984).

13/ A recent article entitled "Boardroom Jitters—A Landmark Court Decision Upsets Corporate Directors," by Richard H. Leisner published in Barron's (April 22, 1985), at p.34, discusses in some detail reaction to, and possible legal implications of, the Delaware Supreme Court's decision id Smith v. Van Gorkom, infra.

14/ ___ Del. ___, 53 L.W. 2393 (Delaware Supreme Court, January 29, 1985).

grossly negligent, and the business judgment rule provided no defense under the circumstances. Thus, there appears to be at least some minimal duty to act in an informed manner in order for directors to escape liability for "bad" business decisions.

Apart from these recent Delaware cases, the matter of derivative suit liability of corporate directors for corporate misconduct is a matter that has drawn extensive recent legal commentary.[15] Many of the analysts are quick to note that various state jurisdictions have established different legal thresholds regarding duties owed to the corporations by directors. Not all jurisdictions seem to offer the breadth of director immunity as Delaware offers under the gross negligence standard. In many jurisdictions the duty of care owed by directors to assure compliance with the law is often characterized as being that of reasonable prudent men in making sound business decisions.[16] But it is difficult even under the prudence standard to find direct precedent holding corporate directors liable for losses in the form of civil penalties for non-compliance with law.

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[15] See among other articles, Manning, The Business Judgment Rule in Overview, 45 Ohio State Law Journal 513 (1984); Morris, The Aftermath of Zapata Corp v. Maldonado [430 A.2d 779] : What is Left of the Business Judgment Rule? 88 Dickinson Law Review 441 (1984); Frankel and Barsky, The Power Struggle Between Shareholders and Directors: The Demand Requirement in Derivative Suits, 12 Hofstra Law Review 39 (1983); Fischel, The Corporate Governance Movement, 35 Vanderbilt Law Review 1259 (1982); Dickstein, Corporate Governance and the Shareholders' Derivative Action: Rules and Remedies for Implementing the Monitoring Model, 3 Cardozo Law Review 627 (1982); Weinfeld, Criminal Liability of Corporate Managers for Deaths of Their Employees: People v. Warner-Lambert Co.[414 N.E.2d 660 (N.Y. 1981)], 46 Albany Law Review 655 (1982); Duesenberg, The Business Judgment Rule and Shareholder Derivative Suits: A View From the Inside, 60 Washington University Law Quarterly 311 (1982); Brickey, Corporate Criminal Accountability: A Brief History and An Observation, 60 Washington University Law Quarterly 393 (1982); Haft, Business Decisions by the New Board: Behavioral Science and Corporate Law, 80 Michigan Law Review 1 (1981); Dent, The Revolution in Corporate Governance, the Monitoring Board, and the Director's Duty of Care, 61 Boston University Law Review 623 (1981); Coffee and Schwartz, The Survival of the Derivative Suit: An Evaluation and a Proposal for Legislative Reform, 81 Columbia Law Review 261 (1981); Moore, Corporate Officer and Director Liability: Is Corporate Behavior Beyond the Control of Our legal System? 16 Capital University Law Review; Jones, Corporate Governance: Who Controls the Large Corporation? 30 Hastings Law Journal 1261 (1979); Small, The Evolving Role of the Director in Corporate Governance, 30 Hastings Law Journal 1353 (1979); Coffee, Corporate Misconduct, 63 Virginia Law Review 1099 (1977).

Although the concept of prudence as a business judgment standard has received extensive attention recently in the context of regulated utilities, where the standard would guide rate makers on the wisdom of public utility investments,[17] the prudence and reasonableness test is one the courts are reluctant to enforce against directors.

Thus, it would seem that as a matter of law the business judgment rule would provide a very substantial defense to a derivative suit brought by shareholders based upon recovery of civil penalties imposed on the corporation for non-compliance with federal regulation.

It is important to observe that where statutory laws have intended that directors bear legal responsibility and civil liability for their conduct in an official legal capacity as a director, statutes have directly provided that the penalties be brought against the directors. One major example that illustrates this point is federal securities laws, under which numerous direct penalties were both authorized and enforced against directors for their conduct.[18]

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[16] See for example the discussion of duties of care and prudence in Dent, The Revolution in Corporate Governance, The Monitoring Board, and The Director's Duty of Care, 61 Boston University Law Review 623, at 646 (1981), and the discussion regarding the obligation of director's to monitor compliance with the law by corporations, Id., at 676.

[17] See, The Prudent Investment Test in the 1980s, (The National Regulatory Research Institute, Ohio State University, April 1985).

One area of derivative actions brought against directors for corporate wrongdoing concerns corporate bribes and kickbacks given to foreign officials—conduct often illegal in foreign countries. However, almost uniformly, the several cases have found for one legal reason or another that directors to be absolved of liability. In Auerbach v. Bennett,[19] for example, the court found that director deference on the question of suits against involved directors to a special litigation committee established by uninvolved directors where the committee decided not to sue did not create liability on the part of the directors in a derivative suit.

And in Gall v. Exxon Corp.[20] held that the decision of the directors not to sue on behalf of the corporation regarding the payment of illegal bribes was not a violation of law itself and that the directors were not liable in a derivative suit.

One of the leading cases often cited with regard to the liability of directors for actions of the corporation leading to possible civil damages on the part of the corporation is Graham v. Allis-Chalmers Manufacturing Co.,[21] in which the Delaware Supreme Court found that the directors of the corporation had not breached a duty of care to the corporation in failing to discover that antitrust violations leading to potential corporate liabilities were occurring on the part of several corporate officers.

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[18] See the discussion of liability of directors under securities laws in Haft, Business Decisions by the New Board: Behavioral Science and Corporate Law, 80 Michigan Law Review 1, at 27 (1981).

[19] 47 N.Y.2d 619, 393 N.E.2d 994, 419 N.Y.S.2d 920 (1970).

[20] 418 F. Supp. 508 (S.D.N.Y. 1976).

[21] 41 Del. Ch. 78 (Del. Sup. Ct.), 188 A.2d 125 (1963). See also, Ash v. International Business Machines, Inc., 353 F.2d 491 (3d Cir. 1965), cert. denied 414 U.S. 857 (1973).

Despite the extensive legal analysis of the liability of directors of corporations for corporate misconduct, clearly summarizing the law in the area is extremely difficult. In fact, one extensive analysis of this area of the law was summarized with this observation:

> As we have seen, the spectrum of possible judicial responses [to corporate misconduct] ranges from imposing strict liability to recognizing defenses that at least in combination, could immunize almost any form of misconduct from the reach of shareholders.22/

In considering the question of whether or not civil penalties or non-compliance with federal law constitutes sufficient negligence, whatever degree of negligence may be required, so as to create liability for the losses to the corporation on the part of the its directors, we are unable to identify direct judicial precedent. For this reason, it would appear that the general principles of the business judgment rule would govern the extent of any liability on the part of the directors.

There appears to be no authority that holds that the liability of a corporation for civil penalties, or even criminal penalties for that matter, constitutes negligence *per se* on the part of the corporate directors. Thus, the threshold issue for a court considering a derivative suit based on corporate non-compliance with federal fuel economy standards would be a question of law: what standard of negligence to apply to such a situation. The other issues for the court to consider in such a suit would be issues of fact, that might include some of the following issues, among others:

1) was compliance with the fuel economy standard achievable, in light of

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22/ Coffee, Corporate Misconduct, 63 Virginia Law Review 1099, at 1241 (1977).

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available technology, production circumstances, and other similar factors;

2) what actually lead to the non-compliance of the corporation (a failure of adequate planning for production of models with significant fuel economy, for example);

3) what role did the directors play in the failure to meet the standards; and,

4) what was the loss to the corporation as a consequence of no being in compliance with the fuel economy standards.

Perhaps, the last issue of fact presents a significant issue, for it is often stated that more expensive, lower-mileage automobiles provide the largest profit margins to manufacturers. If that could be legally demonstrated, the non-compliance with the federal fuel economy standards could not be viewed legally as simply resulting in financial losses to the corporation because of payment of possible civil penalties. Instead it could be argued that the net financial effect on the corporation should be used to determine whether the corporation has actually sustained a loss, for which there might be potentially liability on the part of the directors. Although the penalties for non-compliance with the fuel economy standards are potentially large where the average mileage falls substantially below the standard, the penalty may not be as significant when compared with the profits earned from the production of low-mileage automobiles. In effect, the net financial result that would have occurred from compliance with the fuel economy standards might be compared with the result that did occur.

Obviously, the actual profits and financial results of compliance could yield a range of results depending on the circumstances of that auto maker.

But the important point is that the actions of the directors in deciding not to comply, or resulting in non-compliance, might not have injured the corporation when compared with what would have occurred if there had been compliance. That this kind of analysis would be used by directors to defend their actions would seem quite likely, since the nature of a derivative suit is equitable, and an equitable action would not allow shareholders to argue only the loss of the civil penalty to the corporation, while ignoring the increased profits that might be obtained by decisions to produce various models.

Moreover, arguments about the comparative effect of non-compliance—even where a net loss could be shown to the corporation—might not be viewed by a court as negligent as a matter of law when other possible factors are considered. For example, expansion of market share, or the willingness of the corporation to sustain short-term penalty payments for the purpose of achieving a longer term financial advantage well beyond those losses might also be considered as a possible defense by the directors. In fact, arguments like these are precisely the reason why the courts rely upon the business judgment rule to avoid second guessing management.

Conclusion

For all the reasons discussed above, it appears that the legal concept of the business judgment rule would offer a significant defense to directors of an automobile manufacturing concern faced with a derivative action based upon non-compliance with federal fuel economy standards. While the merits of such a suit cannot be judged in advance because of the important and, perhaps, determinative, factual circumstances that might be alleged to sustain such a suit, the threshold legal and factual issues would seem to make success of such a suit extremely difficult. Obviously, the law does not prevent the filing of lawsuits or the need to defend them. And as has been observed, derivative actions have often been subject to abuse by shareholders, so that it cannot be said that derivative suits will not be brought. But, again prevailing in such a suit will require the plaintiff-shareholder to sustain substantial legal and factual burdens.

Two final points might be made with respect to the federal fuel economy standards. First, there are really very few regulatory options available to the Congress to impose and enforce federal fuel economy standards. Certainly, the existing level of civil penalties could be reduced, but if there is some theoretical liability of directors as the result of derivative actions such a reduction would not immunize liability. Civil penalties also involve a lesser sanction than criminal penalties that might have been imposed. But it is difficult to conceive of an enforcement mechanism to require compliance with the fuel economy standards that would not expose directors to some potential liability through derivative actions, unless Congress were to simply make express provision against such derivative actions. The granting of immunity from possible derivative actions to directors could have an effect that runs counter to the public policy of the fuel economy standards by encouraging non-compliance and shifting liability burdens directly to corporate shareholders rather than requiring the good faith efforts of compliance with the standards through corporate policies developed by directors and corporate management.

Second, the concept of the derivative action must be regarded as incidental to the public purpose undertaken by Congress in establishing the fuel economy standards. It should be noted that in establishing the fuel economy standards Congress sought to impose the requirements without total preemption or intrusion into traditional state corporate regulation. Although Congress did preempt the ability of states to establish fuel economy standards while federal standards were in place,[23/] it seems unlikely that this statutory preemption would be construed to shut off incidental corporate remedies—such a derivative suits—arising out of non-compliance with federal standards.

Thus, to the extent that your inquiry arises out of concern over possible corporate director liability in possible derivative actions relating the non-compliance with fuel economy standards in the context of possible legislative modifications that might foreclose director liability, it should be observed that Congress obviously possesses the legislative power to modify the statute and reconsider policy concerns over possible director liability. It cannot be said, in the absence of controlling judicial precedent, that definitive legal liability of directors could presently arise because of non-compliance with the federal fuel economy standards.

We trust that the foregoing has been responsive to your inquiry.

Robert D. Poling

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American Law Division

[23/] See, 15 U.S. Code Section 2009(a) and (b), which provides: "(a) [w]henever an average fuel economy standard established under this subchapter is in effect, no State or political subdivision of a State shall have authority to adopt or enforce any law or regulation relating to fuel economy standards or average fuel economy standards applicable to automobiles covered by such Federal Standard." (emphasis added).

Mr. MARKEY. We invite the witnesses to submit legal memoranda on this issue. But it is my view that with the paying of any of these fines that might be assessed, that the company is fully able to continue the production and employment of those involved in that production of any and all automobiles that the company seeks to produce.

Would you agree with that, Mr. Sperlich?

Mr. SPERLICH. That was my understanding of the law.

Mr. MARKEY. Dr. Whitman?

Ms. WHITMAN. We have filed legal memoranda on this issue in the past, and I'm sure we'll be glad to do so again. I can only repeat that it is our view that we cannot plan to engage in unlawful conduct. That is, our long-term compliance strategy cannot include planning to pay a fine. That does not mean that there are not circumstances under which we might end up paying a fine, but that's quite different. But we feel that we would have to proceed with plans to come into compliance.

Mr. MARKEY. So you have no long-term plan in place right now to comply with the law?

Ms. WHITMAN. We do.

Mr. MARKEY. You do, to meet the 1987 standard or 1988 standard of 27.5? You have a plan in place to meet that?

Ms. WHITMAN. We do.

Mr. MARKEY. You do.

Does Ford have a plan in place to meet the 1988 standard?

Ms. PETRAUSKAS. We do, in the sense that we are doing those things that need to be done, that regardless of what happens in terms of having the standard being amended, we will meet the law over the carryover period.

Mr. MARKEY. You will meet it. And just so I understand this, you are willing to make whatever financial commitment is necessary in order to meet that standard absent the waiver?

Ms. WHITMAN. Well, as I say, the plan that we have would involve, as I said before, substantial product restriction and curtailment of production and employment.

Mr. MARKEY. But not increasing the commitment to technology above and beyond what you have already committed?

Ms. WHITMAN. There is no way, given the lead time in this industry, as I say, that we can make further changes. We, too, have in place the capacity to produce the product lineup which would more than meet the standard, but under the current outlook for consumer demand, there are not further technological fixes that we can make that would bring that about without, as I say, restrictions.

Now don't misunderstand me. Those restrictions would also be very costly to us. They would have a significant dollar cost. But that wouldn't be the most important cost.

Mr. MARKEY. Could I just get in summary again. Mr. Sperlich, your comment on their inability to technologically comply with the standard by 1988, let us say?

Mr. SPERLICH. It is our understanding that they do, in fact, intend to comply technologically with the standard in 1988.

Mr. MARKEY. That they do intend to comply?

Mr. SPERLICH. Yes.

Mr. **Markey**. Do you believe they have the capacity to do so?

Mr. **Sperlich**. Yes.

Mr. **Markey**. You do.

I thank you very, very much for your patience and understanding. I am sure there are other Members who would like to come back and ask you further questions, but it just is not going to be possible, consistent with giving the other witnesses a fair opportunity to testify.

Thank you very, very much.

[Testimony resumes on p. 351.]

[The following information was received from the Chrysler Corp.:]

"Unlawful" Conduct Under the CAFE Law

During recent months several automobile manufacturers have insisted that the penalty provisions of the Energy Policy and Conservation Act of 1975 would require them to make drastic product curtailments and close factories if they are unable to obtain a rollback in the corporate average fuel economy (CAFE) standard. This memorandum addresses that contention.

Statutory Scheme

The Act establishes mandatory fuel economy standards for passenger cars and declares that it is "unlawful" not to meet the prescribed standards. 15 U.S.C. § 2007. It provides for assessment of civil penalties against manufacturers that fail to comply. 15 U.S.C. § 2008. The amount of that civil penalty depends on the extent of the CAFE shortfall and the number of vehicles sold. 15 U.S.C. § 2008(b). The Secretary of Transportation has the authority to modify or waive the civil penalty in certain hardship cases. 15 U.S.C. § 2008(b)(3), (4).

Question Presented

Some have argued that the provision declaring it "unlawful" not to comply with the standard effectively prohibits the sale of noncomplying vehicles. Under this view, a manufacturer must take every possible step to avoid unlawful conduct, even to the point of imposing drastic product restrictions. Such restrictions could entail plant closings, substantial layoffs and considerable economic dislocation. By contrast, there would be much less hardship for the manufacturer and its employees if it could simply pay civil penalties, keep its factories open, and set a reasonable timetable for coming back into compliance. The question is whether this alternative approach is available under the Act. Put another way, did Congress intend to force manufacturers to make an all-or-nothing choice between meeting the standard and closing factories, or did it leave room for a manufacturer to pay penalties and continue selling products in spite of a CAFE shortfall?

Chrysler's Position

Congress could hardly have spoken more plainly on the issue. It specifically rejected the idea of prohibiting the sale of noncomplying vehicles because it did not want to require the closing of factories. The only sanction for noncompliance is a civil penalty, and Congress fully expected that manufacturers faced with the prospect of noncompliance would elect to pay the penalty rather than close their factories.

Language, History and Purpose of the Act

The Act nowhere prohibits the sale of noncomplying vehicles. It does not even give the Secretary, or any other government official, the authority to seek injunctive relief in the courts in cases of extreme or willful noncompliance. The House rejected an amendment that would have permitted the Attorney General to seek a court order against the sale of noncomplying vehicles. 121 Cong. Rec. H5381 (daily ed., June 12, 1975). Although the Act declares it "unlawful" not to meet the standard, that term was introduced into the Act by the House and Senate conferees in an evident attempt to make the language of the Act conform with its clear intent. The House and Senate bills had spoken in terms of "prohibited conduct." See H. Rep. No. 94-340, at 273; S. Rep. No. 94-179, a. 43. As the Congressional Research Service has pointed out in a memorandum on this subject, the civil penalty approach adopted in the Act contrasts sharply with the very different approach that Congress had earlier considered.[1] In 1973, for example, the Senate had passed a bill that would have provided for injunctive relief, impoundment of noncomplying vehicles and even criminal penalties.[2]

Congress carefully limited the penalties for noncompliance because it wanted to reconcile two competing objectives: increasing fuel economy and protecting employment in the domestic auto industry. The balance finds expression in numerous provisions of the Act.[3] For example, the Act permits the Secretary to increase the amount of the civil penalty, but only where he determines that the increase will not cause a significant increase in unemployment in any state or region. 15 U.S.C. § 2008(d)(1)(B)(i). Similarly, in determining the "maximum feasible" fuel economy level, the Secretary is to consider the economic practicability of the standard, 15 U.S.C. § 2002(e)(2), and that in turn requires consideration of the potential impact on employment.[4] To preserve the balance between the Act's energy conservation and employment objectives, the penalty provisions must be read (consistently with their plain meaning) as leaving room for a manufacturer to continue production of noncomplying vehicles on payment of the civil penalty.

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[1] See Congressional Research Service, Penalties for and Potential Consequences of Noncompliance with Automobile Fuel Economy Standards (Sept. 4, 1985), at 3.

[2] See S. Rep. No. 93-526, 93d Cong., 1st Sess. 51 (1973) (report on S. 2176): "New automobiles which do not comply with the [fuel economy standards mandated by the bill] would be banned from the marketplace. Civil and criminal penalties, injunctive relief, and impoundment authority are available to provide effective enforcement."

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[3] In addition to the examples cited above, see 15 U.S.C. § 2003(b)(1), requiring a manufacturer to separate its domestic and imported vehicles for purposes of measuring CAFE compliance. The purpose of this provision was to prevent manufacturers from abandoning small car production in the United States in favor of reliance on fuel efficient captive imports. See 41 Fed. Reg. 5742, 5775 (Jan. 29, 1979) (NHTSA's third annual report to Congress).

[4] The manufacturers now seeking a rollback in the fuel economy standards have acknowledged in that context that Congress sought to balance energy saving and employment objectives. For example, GM has pointed out that "while Congress necessarily intended to place substantial pressure on the manufacturers to implement technological improvements, it fully intended to avoid causing plant closings and production cutbacks." Legislative History Appendix, at 3 submitted by GM to NHTSA as part of its comment on the Notice of Proposed Rulemaking regarding passenger car standards for 1986. Docket No. FE-85-01-NO2-074. Yet it is these same manufacturers who argue that the Act's penalty scheme is so inflexible as to increase greatly the likelihood that factories will have to be closed. These different positions rest on irreconcilable views of the purposes underlying the Act.

NHTSA's Construction of the Act

NHTSA itself has specifically recognized that a noncomplying manufacturer can elect to pay the penalty rather than restrict the availability of products. In explaining the procedures applicable to petitions to roll back the standards for model years 1978-80, the agency noted that "[f]ailure to obtain a reduction is unlikely to have devastating consequences for a manufacturer," since a manufacturer "could elect to pay the civil penalty specified in section 508 . . ." 42 Fed. Reg. 58938, 58946 (November 14, 1977) (emphasis added). At least where the CAFE shortfall is not too great, the agency noted, the penalty "would be relatively small on a per-vehicle basis, compared to the price of the automobile." Id. Plainly enough, NHTSA did not entertain the slightest doubt that a manufacturer could elect to pay the penalties and go on selling a noncomplying mix of vehicles.

The agency gave further evidence of its understanding on this point in response to an earlier effort to roll back CAFE standards. NHTSA, Report on Requests by GM and Ford to Reduce Fuel Economy Standards for MY 1981-85 Passenger Automobiles (Docket No. FE-76-02), June, 1979.IV. NHTSA stated that if a shift in product mix "were needed to comply [with the CAFE standard], major manufacturers probably would not run the marketing risks associated with a radical mix shift . . . rather than face the possibility of paying the relatively modest civil penalties prescribed under the Act." Id. at 16.

Moreover, when NHTSA set the light truck standards for model year 1982 at a level understood to be higher than that which Chrysler could achieve, it explicitly assumed that Chrysler would take no drastic action to alter its product mix. 45 Fed. Reg. 20871 (March 31, 1980) (Final Rule). The agency reasoned that Chrysler would go on selling the same mix and pay the civil penalty (assuming it could not obtain a waiver of the penalty because of the possible adverse effect on competition). Id. at 20876. At no point did the agency give any hint that such an option might not be open to Chrysler under the statute.

Conclusion

For the reasons just described, it is apparent that neither NHTSA nor any other government agency could bar a manufacturer from selling a noncomplying mix of vehicles or impose any sanction on such a manufacturer other than the civil penalty prescribed by law.[8] Nor does the Act create a private right of action that could permit a private citizen or public interest group to enjoin the sale of noncomplying vehicles.[*] Even if there were such a right, no court would find that a private party could obtain injunctive relief against the sale of noncomplying vehicles, since that very remedy was expressly withheld from the federal government.

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[8] See generally 5 B. Mezines, J. Stein, J. Gruff, Administrative Law § 42.01, at 42-3 to 42-5 & n.5 (1985) (agency may not exceed the specific sanctioning authority provided by Congress).

In sum, the "unlawful" conduct provision does not prevent a manufacturer from taking reasonable steps to minimize the hardship to itself, its employees and suppliers, and the economy as a whole in the event of a CAFE shortfall. Congress did not require a manufacturer to discontinue production of noncomplying vehicles. On the contrary, it expressly limited the penalties that could be imposed under the Act to ensure that a manufacturer could pay civil penalties for noncompliance and keep its factories open.

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[*] The Supreme Court has applied a four-part test in determining whether a federal statute creates an implied private cause of action: (1) whether the plaintiff is a member of a class for whose "especial benefit" the statute was enacted; (2) whether there is evidence of legislative intent to create or deny a private cause of action; (3) whether a private cause of action is consistent with the underlying purposes of the legislative scheme; and (4) whether the cause of action is one traditionally relegated to state law. Cort v. Ash, 422 U.S. 66 (1975). These factors point decisively against the existence of a private right of action in this case. Cf. Middlesex County Sewage Authority v. National Sea Clammers Ass'n, 453 U.S. 1, 14-15 (1981) (where statute provides particular remedy, courts must be chary of reading other remedies into it; in the absence of strong indicia of contrary congressional intent, Court was compelled to conclude that Congress provided precisely the remedies it considered appropriate).

Risk of Shareholder Derivative Suit

It has been suggested that an automobile manufacturer, faced with imminent noncompliance with a corporate average fuel economy ("CAFE") standard, would withhold products from the market to avoid noncompliance rather than pay a civil penalty. It is argued that such drastic action, involving closing of factories and putting thousands of autoworkers out of work, would be compelled by the risk that a shareholder would successfully bring a derivative suit against the officers and directors that authorized payment of a civil penalty.

Chrysler contends that a manufacturer faces no significant risk that a shareholder could succeed in a derivative suit if the corporation pays the assessed civil penalty and establishes a program for bringing itself back into compliance with CAFE standards. This conclusion is based on well-accepted principles applicable to derivative actions:

1. A shareholder derivative suit asserts the claim of the corporation, when the corporation itself is unwilling to press the suit, against persons who caused "loss or damage" to the corporation. Citron v. Merritt-Chapman & Scott Corp., 409 A.2d 607, 611 (Del. Ch. 1977), aff'd, 407 A.2d 1040 (Del. 1979). A plaintiff would have to allege that corporate management's decision to pay the

penalties, rather than withhold products, had caused the corporation "loss or damage."[1] Since the penalties would inevitably cost the corporation much less than the withholding of products, the plaintiff could not even meet the most basic requirement of showing "loss or damage." *Id.*, ("loss or damage to the corporation cannot be inferred from general and indefinite allegations and the mere assertion that conduct was 'to the detriment' of the corporation").[2] Indeed, a shareholder might be *more* likely to bring a derivative suit if the corporation were to withhold products, since that would cause more "loss or damage" than the payment of penalties.

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[1] According to a memorandum prepared by the Congressional Research Service,

> "the nature of a derivative suit is equitable, and an equitable action would not allow shareholders to argue only the loss of the civil penalty to the corporation, while ignoring the increased profits that might be obtained by decisions to produce various models."

CRS Memorandum re: "Liability of Directors of Automobile Manufacturing Concerns For Civil Penalties Incurred for Non-Compliance with Federal Automobile Fuel Economy Standards," at 12 (May 16, 1985).

[2] It makes no difference whether the shareholder attacks (1) the decision to pay the penalty rather than drastically restrict product offerings, or (2) the series of decisions made over the course of several years, that led to CAFE difficulties. The first approach fails because the decision to pay the penalties would entail *less* loss and damage to the corporation than the withholding of products. Under the second approach, the shareholder would argue that management's failure was in not taking timely action to meet the standard. But the risk of such a suit does not depend on management's deciding to pay the penalties. Even if the corporation were to withhold products to avoid a violation, a shareholder could argue that management error was responsible for the loss.

2. Even if there were a credible basis for claiming loss or damage, the shareholder would still not be able to sue without first asking the corporation to bring the suit in its own behalf.[3] If he makes the demand and the corporation determines that the litigation would not be in the best interests of the corporation, the court would dismiss the action without even reaching the merits of the suit unless it were to find that the decision not to bring the suit was "wrongful." Zapata Corp. v. Maldonado, 430 A.2d 779, 784 (Del. 1981). In making that determination, the court would apply the "business judgement" rule and presume that the decision was reasonable and made with due regard for the best interests of the corporation.[4] Aronson v. Levis, 473 A.2d 805, 812 (Del. 1984).

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[3] Under Delaware law, a shareholder is excused from the obligation to make a "demand" on the corporation only in limited circumstances. Aronson v. Lewis, 473 A.2d 805 (Del. 1984). Demand may be excused where it would be futile -- for example, where the officers and directors of the corporation "are under an influence which sterilizes their discretion, [so] they cannot be considered proper persons to conduct litigation on behalf of the corporation." Id. at 814. "[T]he mere threat of personal liability for approving a questioned transaction, standing alone, is insufficient to challenge the independence or disinterestedness of directors . . . ." Id.

[4] The corporation would in all likelihood act on the recommendation of a specially appointed litigation committee consisting of disinterested persons -- e.g., outside directors appointed after the conduct at issue. Cf. Zapata Corp. v. Maldonado, 430 A.2d 779, 787 (Del. 1981).

3. Even if the court were to reach the merits of the suit, it would consider only whether, in deciding to pay the penalties rather than withhold products, corporate management had exercised reasonable "business judgment." Aronson v. Lewis, 473 A.2d 805 (Del. 1984). The question would not be whether the decision was right or wrong or whether the trier of fact would have reached the same decision. The court would not disturb management's decision so long as it could be "attributed to any rational business purpose." Sinclair Oil Corp. v. Levien, 280 A.2d 717, 720 (Del. 1971). Moreover, the court would give management the benefit of a presumption that they had "acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interest of the company." Aronson v. Lewis, 473 A.2d 805, 812 (Del. 1984).[5]

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[5] Courts may find a rational business purpose underlying the payment of penalties even where a net loss to the corporation could be shown. The Congressional Research Service Memorandum (supra, n.1) identifies additional factors in support of a decision to pay civil penalties:

> "[E]xpansion of market share, or the willingness of the corporation to sustain short-term penalty payments for the purpose of achieving a longer term financial advantage well beyond those losses might also be considered as a possible defense by the directors."

CRS memorandum at 12.

The CRS goes on to note that, "arguments like these are precisely the reason why the courts rely upon the business judgment rule to avoid second guessing management." Id.

4. The "business judgment" rule would apply, and management's action would be presumed reasonable, even though the CAFE law declares it "unlawful" not to meet the standard. The function of a derivative suit is to obtain redress for "loss or damage" inflicted on the corporation, not to enforce general principles of public policy.[4] As one commentator has noted:

> "[A] corporate recovery against its fiduciaries for unlawful activities can occur only when the harm from the misconduct exceeds the benefit. This limitation prevents the derivative suit from serving as a vehicle for redressing social harms committed by the corporation's managers."

Cox, Compensation, Deterrence, and the Market as Boundaries for Derivative Suit Procedures, 52 Geo. Wash. L. Rev. 745, 765 (1984).

For all these reasons, it is virtually inconceivable that a court would disturb the decision to pay civil penalties.

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[4] As Justice Brandeis stated in Ashwander v. Tennessee Valley Authority, 297 U.S. 288, 343 (1936) (Brandeis J., concurring):

> "Mere belief that corporate action, taken or contemplated, is illegal gives the [shareholder] no greater right to interfere than is possessed by any other citizen. Stockholders are not guardians of the public. The function of guarding the public against acts deemed illegal rests with public officials."

See also Abbey v. Control Data Corp., 603 F.2d 724, 730 (8th Cir. 1979), cert. denied, 444 U.S. 1017 (1980) (no merit to plaintiff's argument that the business judgment rule is inapplicable where the defendant-directors are charged with criminal misconduct); Rosengarten v. ITT, 466 F. Supp. 817, 824 (S.D.N.Y. 1979), ("derivative action is designed to redress wrongs to the corporation and not wrongs to the public").

Mr. MARKEY. Our final set of witnesses, Mr. Mark Ledbetter. Energy Conservation Coalition; Mr. Clarence Ditlow from the Center for Auto Safety; Ms. Deborah Bleviss from the Federation of American Scientists; and Mr. Robert Crandall from the Brookings Institution.

Ms. Joan Claybrook, president of Public Citizen, was also scheduled to testify at this time, but unfortunately, due to an illness, she has had to cancel her appearance here this afternoon. We are sad to receive that news, but we believe that we have a panel here that will be able to fully represent the range of views that exists on this subject.

So let us begin by requesting from the witnesses that they give us an opening 5-minute statement apiece. Please try to limit it to that 5 minutes, and at the conclusion of that, we will then move to questions from the subcommittee members.

Could we begin with Mr. Ditlow?

STATEMENTS OF CLARENCE M. DITLOW III, DIRECTOR, CENTER FOR AUTO SAFETY; MARC LEDBETTER, POLICY DIRECTOR, ENERGY CONSERVATION COALITION; ROBERT W. CRANDALL, SENIOR FELLOW, BROOKINGS INSTITUTION; AND DEBORAH LYNN BLEVISS, FELLOW, FEDERATION OF AMERICAN SCIENTISTS.

Mr. DITLOW. Thank you, Chairman Markey.

First of all, I would like to point out something in your opening statement when you referred to the 60-miles-per-gallon Sprint. In reality, the situation is even worse than what you say, because those are the EPA numbers. For CAFE purposes, you get credit for about 10 percent more, so you're really talking about 70 miles per gallon. We keep two sets of books in this country, one is the EPA rating on the side of the car and the other is used for determining CAFE. The Sprint and those other high mileage cars that you see actually get much better mileage.

I would like to suggest that, but for the 18-month lead time requirement, the 27.5-mile-per-gallon standard for 1986 cars should have been increased, not decreased. That applies to the 1987 and 1988 cars as well.

The reasons give by Ford and GM are designed to obscure the fact that 27.5 can be obtained and surpassed by the use of technologies and models rejected by the manufacturers to maximize short-term profits at the expense of long-term profits and the economic health of the Nation.

The biggest single factor in Ford and GM being below 27.5 miles per gallon today, rather than achieving 31 and 29 which they originally projected, is their deferral of plans to replace fuel inefficient rear-wheel drive cars with more fuel efficient front-wheel drive cars. If these cars are replaced by more fuel efficient front-wheel drive models, there would be no loss in sales, no loss in jobs, no shutting down of production as so direly predicted by Ford and GM. And that fact was well presented in 1977 when GM chopped nearly 1,000 pounds out of its big cars, while Ford continued to sell and advertise its large cars as the best cars.

And what happened? Chevy beat the socks off Ford by outselling Ford more than 2 to 1. In other words, if you produce a fuel-efficient big car, it will sell, and consumers will buy it.

What we see in the DOT proceeding is nothing more than a giant shell game, where true manufacturing capability is hidden under a shell called "confidentiality." Although GM and Ford are now asking for a rollback of the 1986 standard, they earlier said that they would be exceeding the standard in later model years, as well as in 1986 itself.

Even in the midst of the hearings on the 1986 standard, DOT has continued to let the auto companies hide their true fuel economy capability under the facade of confidentiality. It was only after protracted effort that DOT even released the single fact that GM and Ford now project that their fuel economies will be in excess of the 26 that they have requested for 1986.

To the extent that—and I would like to focus on this very specifically—confidential materials versus public materials—what Ford and GM are doing is, they're lowballing 1986. They're putting their fuel-inefficient cars in that model year, and they're transferring their fuel-efficient cars into the 1987 model years. They are what we call accounting tricks.

For example, they are extending the model year for 1986. They are extending the production into November and December for the big cars only, thereby deflating the fuel economy by 1 or 2 miles per gallon.

If you look at other things that they're doing, Ford itself has projected the mileage in their petition to lower the standard for big cars to be around 21 miles per gallon, when they state the large cars will, in fact, not pay a gas-guzzler tax. So what they're doing is, they're submitting phony figures to the Department of Transportation. We have analyzed them in our statement that we are submitting for the record today. What I'd like to point out is that if you eliminate the accounting tricks alone, you will find that the Ford Motor Co. will, in fact, meet 27.5 in 1986. For example, if you eliminated the extended model run for large cars, if you set the luxury fuel economy at 22.5 because they're not going to pay a gas-guzzler tax, if you used realistic sales figure, you would find Ford at 27.5 and even higher in 1987 and 1988.

What we are seeing is the manufacturers attempting to get a lower standard in 1986 and build up credits in 1987 and 1988. General Motors is submitting a letter dated June 1985 to their stockholders, which I have here today, which says that they expect to meet any deficits in 1984 through 1986 with higher fuel economies, above 27.5, in 1987 and 1988.

That's not what they're telling the committee. That's not what they're telling DOT, but it's what they are telling selected members of the public.

Finally, I would like to point out two other facts that few people have looked at in this proceeding. The real winners are going to be many of the European car companies. You see manufacturers such as Mercedes-Benz with 24 miles per gallon, Volvo 26.5, Saab at 25.4, and Peugeot at 25.6. Those companies are going to benefit by saving tens of millions of dollars in penalties. What we should be looking at today is the fact that hidden behind DOT's efforts to relax the 1986 CAFE standards is a tragedy that higher CAFE standards for future model years are being eliminated by inaction.

It is already too late to increase the CAFE standard for 1987. It will soon be too late for 1988 as well. And if DOT has its way, lower mileage cars produced in the 1986 to 1988 timeframe will be on the road until the year 2000, consuming excessive gasoline no matter how great our energy conservation needs in that time. For these reasons we support the more stringent fuel economy proposed in H.R. 1024, which chart a far more secure energy policy than the head-in-the-sand policy of DOT.

Thank you.

[Testimony resumes on p. 371.]

[The prepared statement and attachments of Mr. Ditlow follow:]

STATEMENT OF CLARENCE M. DITLOW III
DIRECTOR, CENTER FOR AUTO SAFETY
Before the
SUBCOMMITTEE ON ENERGY CONSERVATION AND POWER
OF THE HOUSE COMMITTEE ON ENERGY AND COMMERCE
Washington, D.C., September 19, 1985

Mr. Chairman and members of the Subcommittee, thank you for the invitation to testify on the automobile fuel economy or Corporate Average Fuel Economy (CAFE) standards established under the Energy Policy and Conservation Act of 1975. The Center for Auto Safety is a non-profit organization founded by Consumers Union and Ralph Nader in 1970 but is now independent of both.

The motor vehicle fuel economy standards mandated by Congress in the Energy Policy and Conservation Act (EPCA) represent the most significant energy conservation program in this country. The express purpose of the fuel economy program was to reduce the U.S. vulnerability to foreign events by improving vehicle fuel efficiency over 1974 levels by 50% by 1980, and 100% -- to 27.5 MPG -- by 1985. The EPCA fuel economy standards were intended to reduce U.S. oil consumption by 3 million barrels of oil per day by 1985.[1]

Although there is a shortfall between the mileage new cars actually get on the road and the CAFE standards, there can be little doubt that the Congressionally-mandated fuel economy standards are a spectacular success that should be encouraged rather that dropped. When the Department of Transportation (DOT) produced its last detailed annual fuel economy report in 1981, the agency estimated that in 1980 alone the mileage standards reduced foreign oil imports by $3 billion. Purchasers of a 1985 car save $3,300 in gasoline costs due to the mileage standards.

On a broader level, the CAFE standards have advanced major national policies. These include enhanced national security through reduced dependence on imported oil; significantly reduced fuel consumption; improved U.S. balance of trade and balance of payments resulting from reduced oil imports; reduced inflationary pressure; lessened dependence of the U.S. economy on foreign petroleum supplies; and stimulation of substantial innovation in automotive design and production technology. There can be little doubt that the CAFE standards, by decreasing demand for petroleum, have helped break OPEC's ability to fix high oil prices.

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[1] H.R. Rep. No. 94-340, 95th Congs., 1st Sess. 86 (1975).

Post-1985 CAFE Standards

The DOT has done a complete about face on post-1985 CAFE standards, going from supporting more stringent gas mileage standards beyond 1985 to moving toward weakening the 27.5 MPG standard. Yet the very reasons DOT cited in 1981 to increase the 27.5 MPG standard are even stronger today than before.

Recognizing the need of the nation to further conserve energy through improved fuel economy, DOT issued an advance notice of proposed rulemaking (ANPRM) on the need for post-1985 CAFE standards higher than 27.5 MPG. In an accompanying study entitled Analysis of Post-1985 Fuel Economy, DOT concluded that "we must turn to federal new car energy conservation requirements for the post-1985 period . . . to mitigate continuing dependency on foreign oil."[2]

Market demand depends upon public perception of the energy situation, which may not reflect the reality of the energy supply in this country. The agency illustrated this by reminding that consumers continued to purchase large cars even after the 1973-1974 Arab oil embargo. DOT advised:

> If there is a misjudgment, if the consumer does not demand, and the auto industry does not offer, the best performance on fuel economy, the consequences are severe indeed. Today, there is the danger of being lulled into a state of complacency . . . . The underlying issue is this country's vulnerability in the face

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[2] Analysis, at p. I-2.

> of the uncertain energy future, which may include further severe and unexpected disruptions in foreign oil supplies, and the extent of risk and severity of consequences if wrong guesses are made about consumers' and manufacturers' future demands and response to automotive fuel efficiency.[3]

DOT's fundamental finding was that:

> It comes down to an issue of lead time. The leadtime requirements of the industry in commercializing the technology of greater fuel efficiency is about 5 years. . . . If . . .the Federal government must step in at some later date with fuel economy requirements, the country will find itself in a particularly vulnerable state until the new technologies can be brought into production.[4]

DOT's relaxation of 1986 passenger car fuel economy standards based on market demand for less fuel efficient cars stands the purpose and mandates of the Energy Policy and Conservation Act on their heads. The very reason behind this Act requiring mileage standards for cars and trucks was that the market did not demand vehicles fuel efficient enough to meet the need of the nation to conserve energy. The Act intended fuel economy standards to lead the market rather than have the market lead fuel economy standards, as DOT would have it.

Such an adjustment for changed market conditions ,is not part of technical feasibility within the meaning or the intent of the statute. Nor can the adjustment be sustained on grounds of economic practicability. Although DOT expounds at great length about economic consequences and loss of sales and jobs if the standards are not relaxed, there is no basis for DOT allegations. A difference of 1.5 MPG for a manufacturer who fails to meet a standard is simply a penalty of $75 per vehicle. The auto manufacturers are on record that even $300 price increases, much less a price difference on $75 per vehicle, will not decrease sales, particularly on vehicles that cost $11,000 or more -- as do the less fuel efficient cars.

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[3] Id. at I-2.

[4] Id. at I-2.

1986 CAFE Standards Should Not Be Relaxed

But for the 18 month leadtime requirement, the 27.5 MPG standard for 1986 cars should be increased, not decreased. The reasons given by the auto companies are lame excuses designed to obscure the fact that the 27.5 MPG standard can be attained and surpassed by the use of technology and models deferred by the manufacturers to maximize short-term profits at the expense of long-term profits and the economic health of the nation. Rather than being a result of consumer demand for fuel inefficient cars, GM and Ford are below the 27.5 MPG standard because of their own marketing decisions.

1. Retention of Old Models

The biggest single factor in Ford and GM being below 27.5 MPG today for 1985 rather than achieving the 31.0 and 29.0 MPG they originally projected is the retention of the old rear wheel drive models introduced in the mid-1970's and deferral of plans to replace them with more fuel efficient front-wheel drive cars of the same size. GM's 1985 CAFE was reduced by 1.7 MPG for keeping in production cars such as the Caprice, Chevette, and Malibu. Ford suffered a 1.0 MPG decrease because it kept producing outdated models such as the LTD and Crown Victoria. GM and Ford kept selling these cars not because of consumer demand but because of larger per unit profits than if they were replaced by newer models. The tooling and other investment costs have long since been recovered on these models with GM and Ford keeping more of the sales price as retained profits. Indeed, these models are virtual cash cows with average per unit profits up at least $1500.

If these cars were replaced by more fuel efficient front wheel drive models, there would be no loss in sales, no loss in jobs, and no shutting down of production as so direly and falsely predicted by Ford and GM. If anything, there would be an increase in sales as consumers would find the new models more attractive and efficient than the older models.

This fact was clearly proven in 1977 when GM downsized its large cars and Ford did not. In 1977, GM chopped nearly a thousand pounds out of its big cars while Ford continued to sell and advertise its large cars as the last of the big cars. Despite Ford's larger size, both cars had about the same interior space but the GM cars were 13 to 35% more fuel efficient than the comparable Fords. What happened in the marketplace--the downsized, more fuel efficient GM cars beat the socks off the Fords. As seen below, Chevy outsold Ford by more than 2 to 1 in 1977 with an increase in demand for its slim big cars of 68% compared to 9.8% for Ford. Manufacturers don't lose sales when they bring out new downsized models. They didn't in 1977 and they wouldn't in 1985.

Model	1976 Sales	1977 Sales	Increase
Full-size Chevrolets	333,976	561,658	68%
Full-size Ford	238,974	262,405	9.8%

2. Retention of Old Technology

A closely related factor is the failure of Ford and GM to use available "new" technology. By failing to put fuel injection in as many models as planned, Ford's 1985 CAFE was reduced by 0.36 MPG while GM's was reduced by 0.30 when it restricted the availability of overdrive. When these factors are combined with the retention of old models, GM would have had a 1985 CAFE of 27.4 MPG while Ford would have hit 27.0. Carryback and carryforward credits would have more than taken care of this modest miss rather than the larger ones caused by their conscious corporate decisions.

3. The Demise of the Diesel

In GM's case, their 1985 CAFE was further reduced by 1.37 MPG due to decreased diesel sales. While GM blames this on increased diesel fuel costs, nothing could be further from the truth. Simply put, GM killed the diesel by producing the lemon of the century when it converted the 350 CID gasoline engine into a diesel rather than designing a diesel from the ground up. The GM diesel has done more for grass roots consumer organizing than anything since Ralph Nader with anti-GM diesel groups springing up around the country.

The Giant Shell Game For 1986

DOT and the automakers seeking relaxation of the 1986 CAFE standards are engaged in nothing more than a giant shell game in which true manufacturing capability is hidden under a shell called confidentiality. Although GM and Ford are now asking for a rollback of the post-1985 CAFE standards, they earlier applied for carryback credits from these same model years for exceeding the 27.5 MPG standard. How do you justify rolling back the standards on one hand and project beating the standards on the other hand? Recognizing that the two positions could not be reconciled, both Ford and GM claimed confidentiality for their carryback petitions which showed them exceeding 27.5 MPG in 1986 and beyond.

Even in the middle of the hearings on the 1986 standards, DOT has continued to let the auto companies hide their true fuel economy capabilities under the facade of confidentiality. It was only after protracted efforts that DOT even released the single fact that GM and Ford both projected in their latest submissions to the agency that they would exceed the 26.0 MPG standard proposed by DOT. As demonstrated, below even these admissions of higher fuel economy capability are low ball estimates. But the public cannot tell the truth of the matter for all that is released is the final MPG figure. It's as if the car companies are pulling numbers out of a hat. One day it's 28 MPG; another it's 27; and yet another it's 26 MPG. Whatever it takes to justify a lower standard, the car companies pull it out of the hat confident that DOT will continue to protect their giant shell game behind the cloak of confidentiality.

1. Confidential Applications Show Capability Beyond 27.5 MPG

To the extent DOT has made public some limited details of the Ford and GM carryback petitions, they show these companies can meet the 27.5 MPG standard in 1986. In its May 1984 petition, Ford projected it would achieve 28.5 MPG for its 1986 new car fleet. Just seven months earlier Ford projected 28.8 MPG in 1986. The key to Ford hitting a 28.5 MPG CAFE was simple -- totally replace its outmoded Ford LTD with the new Taurus and Sable which would also sharply switch demand from the Ford Crown Victoria and Mercury Grand Marquis to the new, more fuel efficient front wheel drive Taurus and Sable. The similar November 1984 GM carryback petition projected a 1986 CAFE of 27.0 MPG with 27.5 being surpassed in 1987. Just one year earlier, GM told DOT it would achieve 27.4 MPG in 1986. GM's higher CAFE projections for 1986 and 1987 are also based on the introduction of much more fuel efficient front wheel drive large cars to replace the older rear wheel drive models.

2. Lower Ford & GM Estimates Use Accounting Tricks

When confronted with the fact that their own projections showed 27.5 MPG was feasible in 1986, both GM and Ford revised their CAFE projections downward on assumptions that have nothing to do with technologicial feasibility, but rather are accounting tricks used to deflate 1986 CAFE levels while inflating or transfering mileage gains into 1987 CAFE levels. Thus in February 1985, GM revised its 1986 CAFE projection sharply downward to 25.7 MPG in an effort to justify reducing the 1986 standard. GM's revised projection is based on continued production of the fuel inefficient, older rear wheel drive large cars. Similarly, Ford in April 1985 lowered its estimated 1986 CAFE from 28.5 to 26.0 MPG by projecting the rear wheel drive LTD and Marquis would constitute 4.8% of its fleet instead of 0% while the Crown Victoria and Grand Marquis would be 13.4% instead of just 5.5%. Rather than being replaced by cars with fuel economies in the upper 20's and low 30's, these low 20's MPG cars would drag Ford's CAFE down from 28.5 MPG. To the extent they can be specifically determined from the limited information made public by DOT, the accounting changes used by Ford and GM to deflate 1986 CAFE levels include the following. Other accounting tricks may still be withheld from the public under the guise of confidentiality.

A. GM's 1986 CAFE Tricks

Among the know tricks used by GM to lower its projected 1986 CAFE from 27.4 MPG in its September 1983 DOT submission and 27.0 MPG in November 1984 to 25.7 MPG in February 1985 are the following:

- Artificially extending the 1986 model year for the fuel inefficient rear wheel drive large cars [B and G] bodies from September through December 1986 when by decades of industry practice, they would be 1987 models. According to Ward's July 1 Automotive Reports, this subtracts 350,000 gas guzzlers from the 1987 fleet and adds them to the 1986 fleet. The actual increase given by GM in its February submission and kept secret by DOT may even be higher since GM's projected sales volume went from 4.88 to 5.42 million.
- Decreasing the projected fuel economies and mixes for the fuel efficient compact J-bodies, GM-20's and A-wagons. In the case of the A-wagons which are carryovers from the 1985 model year, the 2.1 MPG drop is totally inexplicable.
- Elimination of the GM/Toyota joint venture [GM-60] car from inclusion in CAFE calculations. If the same treatment were given to this as the AMC Alliance in an August 1982 DOT ruling, these cars would be counted.
- Higher sales projections for the G/G-SP cars [which are being replaced by the more fuel efficient GM-20] than is presently being achieved in 1985.

B. GM's Lowest Possible 1986 CAFE Is 26.7 MPG

Using the base CAFE level of 25.9 MPG [25.7 + 0.2 EPA

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adjustment] for GM in 1986 that DOT used in the proposal to relax the 1986 CAFE standard to 26.0 MPG and eliminating the accounting tricks, the lowest possible fuel economy [CAFE] for GM in 1986 is 26.7 MPG. The 0.8 MPG adjustment is derived as follows:

- Elimination of extended large car model run . . 0.2 MPG
- Actual mileage ratings & mixes for compacts . . 0.3 MPG
- Inclusion of GM-Toyota joint venture cars . . . 0.2 MPG
- Adjustment to actual sales for G/G-SP cars . . 0.1 MPG

C. Ford's 1986 CAFE Tricks

Among the apparent tricks used by Ford to lower its 1986 CAFE from 28.8 MPG in its October 1983 DOT submission and 28.5 MPG in May 1984 to 26.4 MPG in its April 1985 revision are the following:

- Artifically low sales of the Escort/Lynx/EXP to 19.6% from present July 1985 [post-VRA] levels of 22.5%.
- Lowered fuel economy rating for Taurus/Sable which is down 10% from initial 1983 projection.
- Extended 1986 model year production beyond September for largest and fuel efficient body style [Panther, Crown Victoria, Grand Marquis, Town Car].
- Lowered fuel economy ratings below 22.5 MPG for luxury models despite testifying no model will pay gas guzzler tax for being below 22.5 MPG in 1986.
- Unexplained 0.9 MPG fuel economy drop for Mustang/Capri which are carryover models from 1985.

D. Ford's Lowest Possible 1986 CAFE Is 27.5 MPG

Using the base CAFE level of 26.4 MPG for Ford in 1986 [26.0 MPG + 0.2 EPA test procedure adjustment + 0.2 additional test vehicles adjustment] that DOT used in the proposal to relax the 1986 CAFE standards to 26.0 MPG and eliminating the most obvious know accounting tricks, the lowest possible fuel economy [CAFE] for Ford in 1986 is 27.5 MPG. This is derived as follows:

- Eliminated extended model year for large cars.
- Luxury car fuel economy set at 22.5 MPG.
- Escort/Lynx sales set at July 1985 levels.
- Mustang/Capri fuel economy set at 1985 levels.
- Taurus/Sable fuel economy set at initial 27.4 MPG projection.

EPCA Is Not Mandatory; GM & Ford Face Fines Not Plant Closings

GM and Ford premise their relaxation argument on the CAFE standards being mandatory when in fact they are not. EPCA specifically envisioned companies failing to meet standards due to marketing decisions and imposing economic fines related to the cost of improving fuel efficiency ($50 per MPG) and not a deterrent such as the $10,000 per vehicle fine in the Clean Air Act for failing to meet emission standards. There was such concern that the $50 penalty was cheaper than the cost of introducing new technology that EPCA was later amended to give NHTSA the authority to raise the penalty to $100.

Thus a manufacturer could choose to not equip its cars with technology that could improve fuel efficiency by 2 MPG but would cost $100 per vehicle. In order not to give the company a competitive advantage, EPCA would impose a $100 penalty. The situation with Chrysler versus Ford and GM is exactly analogous--Chrysler has paid the price to make its cars more fuel efficient while GM and Ford have chosen to avoid that cost. To relax the 27.5 MPG standard would be to give GM and Ford the precise type of competitive advantage that EPCA intended to avoid.

EPA CAFE Adjustment & Carryforward-back Credits

Although DOT has said EPA CAFE adjustments and related carryback-carryforward credits for exceeding the CAFE standards are not relevant to this proceeding, they clearly are in view of Ford's and GM's ability to manipulate the model year by shortening or extending it to maximize or minimize CAFE as they see fit. In essence, they can build up CAFE levels and credits in a model year after getting DOT to relax a standard and then use the resultant credits at a later point.

EPA has adjusted upwardly by 0.3 to 0.8 MPG the CAFE's achieved by the auto companies from 1981 through 1985. Coupled with the carry forward provisions, the credits achieved for these adjustments have effectively made the 27.5 MPG standard a far easier task for 1985-86. For example, Ford went from owing a $112 million penalty at the end of the 1984 model year to having a $130 million credit which will more than make up for any deficit in the 1985 model year. Since Ford had an EPA adjusted CAFE of 26.2 MPG in 1984, it will surely exceed 27.5 in 1986 when the Taurus and Sable finally come on line.

The European Manufacturers' Regulatory Relief

While most public attention has been paid to Ford and GM who do not need the 27.5 MPG CAFE standard to be relaxed, the primary financial beneficiaries of rolling back the 1986 CAFE standard to 26.0 MPG will be the European manufacturers of expensive imported cars such as Jaguar at a projected 1986 CAFE of 19.2, BMW at 26.1 MPG, Mercedes-Benz at no higher than 24 MPG, Volvo at 26.5 MPG, Saab at 25.4 MPG and Peugeot at 25.6 MPG. Coupled with EPA adjustments, DOT's proposed rollback would save all of these manufacturers many millions of dollars in penalties which some of them have already been paying or about to pay in previous model years.

Higher CAFE Standards Should Be Set

Hidden behind DOT's efforts to relax the 1986 CAFE standards is the tragedy that higher CAFE standards for future model years are being eliminated by inaction. Thus it is already too late to increase the 1987 CAFE standards beyond 27.5 MPG and it will soon be too late for 1988 as well. Despite the fact that the technology exists to obtain 40.5 MPG by 1990 as the Center for Auto Safety and the Environmental Policy Institute originally petitioned, DOT is headed the other direction. If DOT has its way, lower mileage cars will be produced in 1986-88 and will be on the road until the year 2000 consuming excessive gasoline no matter how great our energy conservation needs in that time. For these reasons, the Center supports the more stringent fuel economy standards proposed in H.R. 1024 which chart a far more secure energy policy than the head in the sand policy of DOT.

RESPONSES OF CLARENCE M. DITLOW III, DIRECTOR, CENTER FOR AUTO SAFETY, TO WRITTEN QUESTIONS SUBMITTED PRIOR TO THE SEPTEMBER 19, 1985, HEARING OF THE SUBCOMMITTEE ON ENERGY CONSERVATION AND POWER, COMMITTEE ON ENERGY AND COMMERCE, UNITED STATES HOUSE OF REPRESENTATIVES

Question 1

In your opinion, did Ford and GM do all they could to meet the 1986 CAFE standard? Please supply the Subcommittee with examples where Ford and GM chose not to adapt or alter their models, introduce new models, or retire low-efficiency models that would have helped their compliance with CAFE stadards.

Answer

Ford and GM could have easily met the 1986 CAFE standard if they had implemented existing plans to replace old fuel inefficient models with new front wheel drive cars of the same size. In 1985, GM's CAFE was reduced by 1.7 MPG for retention of models including the Caprice, Chevette and Malibu. GM has also delayed until 1987 or 1988 the scheduled elimination of its fuel inefficient rear-wheel drive Cadillac Fleet Brougham model. Ford in 1985 suffered a 1.0 MPG decrease because it kept producing outdated models such as the LTD and Crown Victoria. Other production decisions made by GM and Ford which have adversely affected their CAFE are summarized in the attached "Attachment B" to Chrysler's May 28, 1985, submission to NHTSA docket FE-85-01-No1.

GM and Ford have kept selling fuel inefficient cars not because of consumer demand but because of larger per unit profits than if they were replaced by newer models. The tooling and other investment costs have long since been recovered on these models with GM and Ford keeping more of the sales price as retained profits. Indeed, these models are virtual cash cows with average per unit profits up at least $1500.

In addition to delaying the introduction of more fuel efficient models, Ford has also failed to make smaller, more fuel efficient engines available on some of their least fuel efficient models. Since 1983, the only engine available on Ford's Crown Victoria and Mercury Grand Marquis, as well as all Lincoln division models, has been the less efficient V8.

Question 2

Is 27.5 mpg achievable by the car companies for Model Year 1986, 1987, 1988?

Answer

CAFE levels well above the current 27.5 MPG standard are now achievable for the 1986-88 model years. As described in the Center's August 8, 1985, statement before the Department of Transportation and August 20, 1985, submission to NHTSA (copies attached), both GM and Ford have used various accounting tricks to artificially lower their 1986 CAFE projections and obfuscate their true CAFE potential. The Center believes that elimination of these accounting tricks would, alone, bring Ford's CAFE up to 27.5 MPG and GM's to 26.7 MPG. Further, production of even a few of the more fuel efficient models deferred by GM and Ford would significantly raise their CAFE. The ability of auto manufacturers to meet CAFE standards significantly higher than 27.5 MPG for model years 1987 and 1988 is discussed in the attached Center petition to NHTSA to raise the CAFE standards (dated July 26, 1984).

Question 3

Do you agree with Ford and GM's estimation of their MY 1986 CAFE level? If not, please provide the Subcommittee with your estimate of the company's CAFE level.

Answer

As explained in the attached Center statement before the Department of Transportation, dated August 8, 1985, and comments to NHTSA, dated August 20, 1985, the Center believes Ford and GM's fuel economy projections are artifically low and do not reflect true capability. Ford's lowest possible fuel economy is actually 27.5 MPG, while GM can achieve a CAFE no lower than 26.7 MPG.

Question 4

The Notice of proposed rulemaking issued by NHTSA suggests that the car manufacturers were "caught by surprise" in March, 1985, when they discovered they would fail to meet the 1986 CAFE standard. Do you think that is accurate? Do you think the car companies had any advance warning that they would not be in compliance? Please supply the Subcommittee with specific examples of the manufacturers' knowledge that they would not comply with the 1986 CAFE standard.

Answer

Contrary to what Ford and GM would like the public and Congress to believe, they did not in March 1985 suddenly become helpless victims of unforseen circumstances. GM and Ford began revising downward their 1986 model year projections as early as 1983. AS NHTSA points out in its July 22, 1985, NPRM, Ford and GM's current estimates are not far from their 1983 projections. 50 Fed. Reg. at 29919. Instead of acting to avert potential CAFE attainment problems in 1983 by methods such as accelerating plans to substitute more fuel efficient models for old rear-wheel drive cars, GM and Ford did just the opposite: they postponed or cancelled planned changes.

If Ford and GM have difficulty in achieving 27.5 MPG in 1986, it will be a result of their failure to introduce new models coupled with the CAFE brinkmanship they have practiced over the past several years. Even with large EPA adjustments, both GM and Ford have fallen well below the CAFE standards in 1983, 1984 and 1985. By relying heavily on carryforward and carryback credits to avoid the penalty for non-compliance in EPCA, Ford and GM left themselves little margin for changed market circumstances. Rather than using the carryforward and carryback provision as a safety valve, Ford and GM set up the possible non-compliance and are attempting to to use it to obtain relaxation of the CAFE standards.

Question 5

What effect has the CAFE standard had on the car companies effort to design and produce fuel efficient cars? What effect would a rollback of the CAFE to 26.0 in 1986 have on this effort? What effect would a rollback of CAFE for MY86-88 have on this effort?

Answer

Although there is a shortfall between the mileage new cars actually get on the road and the CAFE standards, there is little doubt that the Congressionally-mandated fuel economy standards are a spectacular success. According to NHTSA, the domestic fleet CAFE has increased from 13 MPG in 1974 to a projected 25.7 MPG in 1985. The significant technological innovations made by manufacturers include achieving an overall 11-13 percent combined improvement in tire rolling resistance and aerodrag reduction as well as gains of up to 10% efficiency in some engine families.

Reducing the CAFE standards at the request of automakers wishing to cater solely to market damands would make a mockery of EPCA's very intent and devastate future efforts to achieve additional fuel efficiency. The overwhelming need of the nation to conserve energy was wisely recognize by the Congress which enacted EPCA in 1975. CAFE standards were established to ensure that auto manufacturers would make rapid improvements in the fuel efficiency of their vehicles and foster fuel conservation even in times when market demand was insufficient. Reducing the standards to a level so far below Ford and GM's admitted capability would make EPCA's standards meaningless and eliminate incentive for manufacturers to make technological innovations necessary to achieve greater fuel efficiency in future years.

Question 6

Since the CAFE program was enacted by Congress ten years ago, auto manufacturers have doubled the the fuel efficiency of their automobiles. If the CAFE standard for MY86-88 is rolled back, what gains in fuel efficiency would American cars realize in five years? In ten years?

Answer

Reducing the fuel economy standards from 27.5 MPG to 26.0 MPG for model years 1986-88 would cause enormous losses in energy conservation. Using a conservative assumption that domestic production will remain constant at 10 million vehicles through 1988 and that over 10 years a vehicle fleet will average about

100,000 miles, Center projects that reducing the fuel economy standards from from 27.5 to 26.5 MPG would result in the additional consumption of 2.1 billion gallons of gasoline for every model year the standards were reduced. Reducing the CAFE standards to 26.0 for model years 1986-88 would result in the consumption of 41,100 billion additional barrels of oil per day.

The true impact of reducing the CAFE standards can, however, only be judged in light of automakers maximum feasible fuel economy in model years 1987 and 1988. As the attached Center petition for higher fuel economy standards demonstrates, the maximum feasible fuel economy levels for the 1987 and 1988 model years are 31.5 and 34.5 mpg, respectively. Setting the CAFE standards at 26.0 for model years 1986-88 rather than at 27.5 MPG, 31.5 MPG and 34.5 MPG for these successive years would, as the table below shows, result in consumption of an additional 18.3 billion additional gallons of gasoline.

Additional Energy Consumption From Setting CAFE Standards at 26.0 MPG Rather Than the Maximum Fleasible Level

Model Year	Maximum Feasible CAFE (MPG)	Increased Energy Consumption Over Fleet Lifetime (gallons of gasoline)	Annual Increased Energy Conservation (barrels/day)
1986	27.5	2,100,000,000	13,700
1987	31.5	6,720,000,000	43,800
1988	34.5	9,480,000,000	61,800
	Total	18,300,000,000	119,300

Question 7

Does the Act prohibit auto manufacturers from selling a mix of cars not in compliance with the CAFE standard? Please provide the Subcommittee with evidence that either auto manufacturer or NHTSA contemplated the sale of vehicles not in compliance with the CAFE standard and the payment of civil penalties.

Answer

GM and Ford premise their relaxation argument on the CAFE standards being mandatory when in fact they are not. EPCA specifically envisioned companies failing to meet standards due to marketing decisions and imposing economic fines related to the cost of improving fuel efficiency ($50 per MPG) and not a deterrent such as the $10,0000 per vehicle fine in the Clean Air Act for failing to meet emission standards. There was such concern that the $50 penalty was cheaper than the cost of introducing new technology that EPCA was later amended to give NHTSA the authority to raise the penalty to $100.

As discussed in Chrysler's May 13, 1985, memorandum on this subject (attached), NHTSA has on several occassions indicated that manufacturers may choose to pay the penalty in EPCA rather than meet the standards.

Question 8

Are the CAFE standards included in H.R. 1024 achievable by the auto manufacturers?

Answer

For the reasons stated in the attached Center petition to increase the fuel economy standards to 40.5 MPG by 1990, the Center believes the standards proposed in H.R. 1024 are fully achievable.

ATTACHMENT B

SELECTED PRODUCT AND MANUFACTURING CHANGES THAT HURT FUEL ECONOMY

GM has decided to retain its Clark Street Plant in Detroit to build large RWD Cadillacs through 1989 model year.

GM is currently converting its Willow Run Plant from fuel efficient X-cars to large RWD models.

GM Chairman Roger Smith has admitted its only current small car program is NUMMI, the GM/Toyota Joint Venture. Washington Post, November 10, 1983.

GM continues to build RWD Olds 98, Electra and DeVille, originally scheduled for cancellation in 1984.

GM, by cancelling a $530 million retooling program for its St. Therese Quebec Plant, has indefinitely extended the life of the large RWD Cutlass Supreme, Grand Prix and Bonneville.

GM has committed to import significant quantities of small cars from such Japanese manufacturers as Suzuki and Isuzu, rather than build such cars domestically.

Since 1979, GM has cancelled plans for at least two new, more fuel efficient engines. AP Wire, June 8, 1983.

GM has delayed production of FWD luxury cars at its Poletown Plant (Detroit) for at least three years.

GM has deferred new large FWD vehicles from 1983 to 1986 model year and retained older, less efficient large FWD models until about 1990.

GM has deferred new full-size FWD luxury cars at least three model years and intends to retain the older, RWD, less fuel efficient models until about 1990.

Ford has delayed new FWD large cars until about the 1989 model year.

Ford has cut its post-1985 FWD plan in half. Wards Engine Update, April 15, 1983.

GM has apparently dropped plans to drop RWD Grand Prix, Olds Supreme and Buick Regal.

GM deferred downsized FWD program at Janesville, Wisconsin Plant. Wards, December 3, 1984.

GM diesel plant being converted to V-6 gasoline engine production.

GM says its G-cars, the Olds Cutlass Supreme and Pontiac Grand Prix and Bonneville, will stay in production indefinitely. Automotive News, November 12, 1984.

The EPA proclaims it will not allow GM to delay conversion of its painting process at the Georgia facility where the company just moved production of its smallest units, the Chevette/T-1000 line. GM's response is that it may just have to close the small car plant. Automotive News, December 31, 1984.

Cadillac announces that it plans to keep its full-sized rear-drive Fleetwood Brougham possibly as late as the 1988 model year. Automotive News, February 11, 1985.

Ford says it is restyling its big rear-drive cars sometime next year to keep them going through the decade. Automotive News, February 11, 1985.

GM announces plans to switch plant production from V-8 diesel engines to V-6 gas engines, saying it is phasing out its V-8 diesels entirely. Automotive News, February 25, 1985.

Ford says it will keep its large and luxury models going as long as possible. Of its standard-size Crown Victoria/Grand Marquis, Ford comments that it will be replaced "just about never if it keeps going well." They plan to keep the big Lincoln Town Car in production through the decade with a car measuring similar dimensions to replace it in 1990. Automotive News, May 6, 1985.

Ford decides to drop its fuel economy helper, the turbodiesel, as an option on its Lincoln Continental and Mark VII models. Automotive News, May 6, 1985.

GM reports that it has a shortage of V-6 engines for its A-bodies and N-bodies (such as the Pontiac 6000). Automotive News, May 20, 1985.

Production figures show intermediate and large-size cars dominate the top ten production models. All the big cars are Ford and GM makes. Automotive News, May 20, 1985.

STATEMENT OF MARC LEDBETTER

Mr. **Ledbetter**. My name is Marc Ledbetter, and I am the policy director of the Energy Conservation Coalition, which is a coalition of 17 public interest organizations that work to promote energy conservation. They collectively represent 16 million members.

I want to focus most of my remarks on our energy situation, which has received fairly little attention, particularly our future oil situation.

Currently, U.S. production stands at about 10.2 to 10.5 million barrels per day, which has held relatively constant since 1978. U.S. oil reserves stand at their lowest point since 1951 at 34.5 billion barrels.

As I said, our main problem is, in the future. Both the Department of Energy and the Gas Research Institute project that U.S. oil imports are going to climb up to 7 million barrels per day by the year 2000. And the Energy Information Administration, the Office of Technology Assessment, and the Congressional Research Service all project that that will even go higher to 9.3 million barrels per day by 1995.

So what we are looking at is an enormously growing appetite for imported oil in the United States, and while that appetite is growing, we are seeing an appetite for imported oil growing in developing countries.

Vehicle fleets are expected to increase in these developing countries by about 249 percent by the year 2010. That is going to help fuel an increase in demand for imported oil to about 6 to 8 million barrels per day by the year 2010, according to the World Bank. DOE goes further; they say that imports of oil by those developing countries may reach 12 million barrels per day by the year 2010.

So we have forces at work that are moving us back to the type of market that we saw back in the late 1970's. How are we going to meet it?

Well, we certainly are not going to be able to meet it with the sources of our oil imports that we have relied on in recent years, particularly the United Kingdom and Norwegian production out of the North Sea. That production is expected to peak in 1985 and fall off sharply afterwards. Mexico, another major supplier we've been able to turn to, is expected to have growing internal demand for oil, and therefore, its export capability is going to be severely limited in the future.

So we are looking at importing that oil from the Persian Gulf where two-thirds of the world's remaining resources lie. So if we are going back to the Persian Gulf, mainly controlled by OPEC members, we are going to be facing a much tighter market, higher prices, higher trade imbalance, a situation that is waiting to happen.

Now how has our current oil import situation been affected by auto fuel economy?

We have made great improvements in auto fuel economy, as has been pointed out by several previous witnesses. I have done some quick calculations showing that if our auto fuel economy would have remained constant since 1977, if we would not have had the improvements since 1977, we would be consuming 1.5 million barrels more per day than we currently are consuming. That's a huge amount of oil that is being produced by fuel efficiency in automobiles. It is equal to the total production, or almost equal to the total production, from the entire State of Alaska. Alaska produced—in 1984 produced 1.7 million barrels per day.

Now the Boxer bill, H.R. 1024, would raise our fuel economy standard to 45 miles per gallon by 1995 for passenger cars and 35 miles per gallon by 1995 for light trucks. And Dr. Robert Williams of Princeton University projected that that is going to save us somewhere on the order of 2.2 million barrels per day by the year 2010, which would go a long ways toward relieving the collision course that we are on with other consuming countries that are also going to be relying on oil imports from the Persian Gulf.

I want to turn my last remarks to the issue of rolling back the standard from 27.5 to 26 miles per gallon.

Chrysler has met the standard. They argue that that proves that the standard is technologically feasible. The National Highway Traffic Safety Administration says that that's not quite the case, because the reason Chrysler can meet the standard and Ford and GM cannot is because Chrysler does not compete in all the large car segments that Ford and GM compete in.

Nevertheless, if you look at measurements of fuel economy that ignore size and class distinctions, Chrysler is more efficient on the basis of fuel efficiency per unit of interior volume, per unit of vehicle weight, and per unit of engine size than are Ford and GM, showing that their technological achievement is much higher than Ford and GM.

Also, if you were to take Chrysler's sales mix in 1984 and apply it to Ford and GM, they would still fail to meet the 27.5 mile per gallon standard. So if Ford and GM had the advantage, the sales mix advantage that Chrysler purportedly has, Ford and GM still would not be able to meet the standard.

That concludes my remarks.

[Testimony resumes on p. 402.]

[The prepared statement and attachment of Mr. Ledbetter follow:]

SEPTEMBER 19, 1985

TESTIMONY
ON
AUTOMOBILE FUEL ECONOMY STANDARDS

BEFORE THE

SUBCOMMITTEE ON ENERGY CONSERVATION AND POWER

OF THE

HOUSE COMMITTEE ON ENERGY AND COMMERCE

ON BEHALF OF

THE FOLLOWING MEMBERS OF THE ENERGY CONSERVATION COALITION:

Environmental Action
Environmental Defense Fund
Environmental Policy Institute
Federation of American Scientists
Friends of the Earth
National Audubon Society
National Consumers League
National Wildlife Federation
Public Citizen
Solar Lobby
Union of Concerned Scientists
United Methodist Church -- Board of Church and Society

Mr. Chairman and members of the Subcommittee, my name is Marc Ledbetter. I am Policy Director of the Energy Conservation Coalition, which is a private, non-profit coalition of seventeen national organizations that collectively represent 16 million members. Thank you for giving us the opportunity to testify today.

Only six years ago, well after the time Congress passed the law creating the federal fuel economy program, our country was beset with an oil crisis. While we scrambled about, desperately seeking ways to cope with the problem, we also reprimanded ourselves for not having foreseen the problem. Although the federal fuel economy program was in place and was having surprising success, its real success would materialize years later, after the new cars with improved fuel economy would make up a majority of the nation's vehicle fleet. We wondered aloud why we hadn't done something sooner.

Cheap and seemingly plentiful oil supplies have once again led us to look at our energy situation with myopic eyes. For some, the federal fuel economy program is no longer an insurance program for future economic security, but an outdated burden on auto manufacturers.

Our federal fuel economy program is undergoing an attack that strikes at its very basis, not only from Ford, GM, and the Automobile Importers of America, but from the Administration itself. The attack on the National Highway Traffic Safety Administration (NHTSA)-administered program was launched in 1981 by this administration when it stopped NHTSA's fuel economy research, discarded technical records, and sharply curtailed the collection of information from auto manufacturers that helped NHTSA monitor the fuel economy progress of manufacturers . Staff for the program has since been cut from 27 to 6. Only a vestige of the former program remains at NHTSA.

Even the consumer information parts of the fuel economy program are under attack. The Department of Energy has slashed the number of statutorily mandated "Gas Mileage Guides" it publishes from more than 7 million to 3 million. The Guide lists the EPA fuel economy ratings of cars and light trucks sold in the U.S. And now DOE has decided not to publish the second edition of the 1985 Guide, which would have contained information on mid-model year changes. Failure to publish the second edition will leave consumers short of fuel economy information on 150 car and light truck models, most of which are fuel-efficient. (1)

Making matters for consumers even worse, the Federal Trade

Commission has announced that it wants to give substantial flexibility to manufacturers in advertising fuel economy. They want to allow manufacturers to use their own mileage claims in advertising their vehicles, ignoring, if they choose, the standardized EPA mileage ratings. They also want to loosen up disclosure requirements explaining differences between a manufacturer's and EPA's mileage rating test conditions. Consumers won't know whose mileage claim to believe.

Now, the core of the fuel economy program -- the CAFE standards -- are under attack. The 1985 model year CAFE standard for light trucks was hurriedly rolled back 1.5 mpg only ten months ago. Ford and GM have attempted to cast their recent petition to roll back the passenger CAFE standard by 1.5 mpg as only a minor adjustment that will have inconsequential effect on total oil consumption in the U.S.

But a rollback of the passenger auto CAFE standard has a much more fundamental effect than Ford and GM suggest. It would not, as they argue, be a minor mid-course correction made necessary by changing energy and economic conditions. It would be a fundamental reversal in our policy of requiring steadily increasing fuel economy standards. It would be an assertion that our economy is much less vulnerable to the devastation of another oil shock, that oil supplies will in the long run remain cheap and plentiful, and that we have reached the technological and economical limits of improving fuel economy in passenger cars.

CAFE standards were adopted in 1975 was to reduce the vulnerability of our economy to oil import interruptions and high oil prices. It was reasoned that since our automobile fleet was a large consumer of oil, was expected to consume an ever increasing amount of oil, and had high potential for increased fuel efficiency, a large part of our national effort to reduce our oil vulnerability should focus on increasing the fuel efficiency of automobiles.

The Administration now argues that our energy situation is much improved, our oil imports are less vulnerable, and that we have the Strategic Petroleum Reserve to protect us. (The contribution the federal fuel economy program has made to an improved energy situation is barely recognized.) However, our economy is still highly vulnerable to oil supply problems.

CURRENT STATUS OF OUR OIL CONSUMPTION AND SUPPLIES

In 1984 the United States consumed 74.0 quadrillion BTU's of energy. 42% (14.7 million barrels per day) of this energy came from oil, almost half of which was consumed by cars and light trucks. Even though the fuel efficiency of cars and light trucks has increased steadily since 1979, increases in total vehicle miles traveled in the U.S. has kept total fuel consumption for these vehicles high. A third of the oil consumed in the U.S. is imported, with the remainder supplied by domestic production. (2)

Petroleum production in the U.S. has held steady since 1978 at between 10.2 and 10.5 million barrels a day (MMB/D), but it has been drawn from a declining reserve base, which in 1985 reached its lowest level since 1951 at 34.5 billion barrels. (3) The reserve to production ratio, an important measure of how quickly we are consuming our oil resources, has fallen steadily and now stands at nine, the lowest of the world's major oil producing nations. (See table 1.) The U.S. is thus exploiting its oil resources at a much faster rate than other major producing countries, speeding the approach of the date at which our country will become at least as dependent upon oil imports as we were in 1977.

FUTURE OIL CONSUMPTION AND SUPPLIES

Our major oil problem lies ahead of us, in the not too distant future. U.S. demand for imports is expected to grow substantially while world demand for oil is expected to do the same, putting the entire world on a collision course for a tighter world oil market and sharply higher prices.

The Department of Energy and the Gas Research Institute project U.S. imports to rise from their 1984 level of 5.4 MMB/D to 7 MMB/D within fifteen years. However, the Energy Information Administration, the Office of Technology Assessment (OTA), and the Congressional Research Service are projecting that imports will reach 9.3 MMB/D as early as the mid 1990's. Such projections mean that the U.S. could again be importing record levels of oil within 10 years. (5) If OTA's low range projection for U.S. oil production in the year 2000 is juxtaposed with DOE's projection of U.S. oil demand in 2000, imports would be even higher yet, at 12 MMB/D. (6)

And while our country's appetite for imported oil is expected to grow, it will compete with a growing world appetite. Vehicle fleets in developing countries are expected to grow 249% by 2010 -- an addition of 90 million cars to the world's 1979 fleet of 309 million. (7) The World Bank expects demand for oil in developing countries to increase 6-8 MMB/D by 1995, and the Department of Energy is projecting an increase in oil demand of 12 MMB/D between 1982 and 2010 in these countries. (8)

Increasing world demand for oil is not the only force that

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READEX

is going to move us toward a much tighter world market. Falling production from some of our major and politically stable suppliers will also speed the move to a tighter market. Combined United Kingdom and Norwegian production, a major source of oil for the Western world, is expected to peak in 1985 and subsequently decline sharply. (9) Mexico, another major U.S. supplier whose sharply increased oil exports to the U.S has helped reduce our reliance on Persian Gulf oil, is experiencing growing internal consumption, making it less likely that it can increase its exports to the U.S. in the future. (10)

In addition, our own oil reserves are looking even more limited. A reduction in U.S. oil production of 1/2 to 1 MMB/D is expected by 1990. (11) The Congressional Office of Technology Assessment recently reported that U.S. offshore oil exploration has been "disappointing", and that the Department of Interior lowered its estimate of offshore oil reserves by 55%. (12) And the Energy Information Administration projects,

> Beyond 1985, total crude oil production in the base case forecast is projected to decline at an average annual rate of 1.7 percent. The expected declines in conventional crude oil production (not including enhanced recovery) from the Lower 48 States continue the trend of recent years. Oil production from the [outer continental shelf] is projected to peak between 1986 and 1988 and then decline slowly, while Alaskan production is projected to fall after a peak in 1990. (13)

A tighter world oil market can only mean an increasing dependence on Persian Gulf oil, which, together with communist controlled oil reserves, make up two thirds of the world's reserves. As seen in the above projections, a tight market could develop again rather soon. Additionally, it means sharply higher oil prices. The Department of Energy projected in its 1983 National Energy Policy Plan that prices will rise to between $57 and $116 per barrel by the year 2010 (1984 dollars). (14)

THE EFFECT OF AUTOMOBILE FUEL ECONOMY ON OIL CONSUMPTION

Were it not for the substantial increases in auto fuel economy achieved by the U.S. auto fleet over the last seven years, the U.S. would be importing even more oil. The average fuel economy of cars and light trucks on the road has risen from 13.9 mpg in 1977 (the year prior to the year CAFE standards took effect) to an estimated 18.4 mpg for 1985. (15) If fuel efficiency would have remained at its 1977 level, the U.S. vehicle fleet would consume in 1985 an additional 1.5 MMB/D, raising the 1985 trade deficit by about $16 billion. (16)

The significance of a 1.5 MMB/D oil savings is best appreciated when compared with oil resources and reserves that the Administration has championed as being essential to our energy security. The undiscovered recoverable resources of the entire Gulf of Alaska are estimated by the Department of Interior to be 400 million barrels of oil, yet at the current rate of energy savings our vehicle fleet can "produce" more oil in a single year. (17) Total oil production in all of Alaska in 1984 was only 1.7 MMB/D. (18) And off the coast of California, where oil development has been pushed hard by the Administration despite environmental concerns, recoverable oil resources are estimated at 2.19 billion barrels, the amount of oil that can be produced with almost no environmental damage by the fuel efficiency of our vehicles over a short four years. (19)

While it is difficult to determine how much of this fuel economy improvement was due to changes in the price of gasoline and how much was due to federal regulation of fuel economy, analyses have been done on this subject. A January 1985 Environmental Protection Agency presentation prepared for the Transportation Review Board of the National Academy of Sciences estimated that the increase in domestic manufacturers' CAFE's since 1977 were 82% due to regulation (CAFE standards and gas guzzler tax) and 18% due to increasing fuel prices. (20)

Without challenging the importance of past improvements in fuel efficiency, Ford and GM have petitioned the National Highway Traffic Safety Administration to reduce the passenger car CAFE standard from 27.5 to 26 mpg. The petitioners have attempted to trivialize the energy consumption effects of reducing the standard. In GM's testimony before the Senate Subcommittee on Energy Regulation and Conservation, they characterized the resulting increase in gasoline consumption as being so inconsequential that U.S. oil refineries could meet the increased gasoline demand by running their operations "for one or two additional minutes a day."

This kind of characterization grossly distorts the issue before this committee. The energy consumption issue is much broader than arguing over a one year change in the standard from 27.5 mpg to 26 mpg. The Energy Policy and Conservation Act requires that any amendment to the post-1985 standard be set by the Secretary of Transportation at the maximum feasible level, considering technological feasibility, economic practicability, the effect of other federal motor vehicle standards on fuel economy, and the need of the nation to conserve energy. Many studies have examined future feasible fuel economy levels and have found them to be far in excess of 26 mpg. A 1982 Office of Technology Assessment study (21), a 1981 Solar Energy Research Institute study (22), and a study done by Frank von Hippel of Princeton University all found that average fuel economy above 40 mpg for new passenger autos in 1995 was economically and technologically feasible. (23)

Representative Barbara Boxer's (D-CA) H.R.1024 would increase fuel economy standards for passenger cars and light trucks to levels in 1995 that are consistent with these studies. Her bill would set a 1995 standard of 45 mpg for passenger autos and 35 mpg for light trucks. Dr. Robert Williams of Princeton University's Center for Energy and Environmental Studies has examined the potential fuel savings of adopting these standards. He estimates that once new cars and trucks meeting these higher standards make up the vehicle fleet, 10 to 15 years after 1995, fuel savings on the order of 2.2 MMB/D are possible. (24) (Cars and light trucks in the U.S. used about 6.5 million barrels per day in 1980.)

Fuel savings of that magnitude would substantially reduce our import dependence and improve our future balance of trade. Depending upon which of DOE's future oil price projections is assumed, such savings could reduce our oil import bill in the year 2010 by between $45.8 and $93.1 billion. It would exert downward pressure on oil prices, and increase pressure on automobile manufacturers all over the world to increase their fuel economy, resulting in even lower demand for oil and more downward pressure on prices.

Thus, the issue is not a rollback in the standard to 26 mpg verses holding the standard at 27.5 mpg in the future. The issue is a rollback in the standard verses what we are technologically and economically capable of achieving, as well as what is nationally desirable for economic and security reasons.

THE SIGNIFICANCE OF INCREASED ENERGY CONSUMPTION RESULTING FROM REDUCING THE CAFE STANDARD FROM 27.5 TO 26 MPG

Yet, instead of moving to increase fuel economy standards to avert a serious future oil problem, the National Highway Traffic Safety Administration (NHTSA) is on the verge of reducing the passenger car standard from 27.5 to 26 mpg. NHTSA has estimated that lowering the 1986 passenger car standard will result in 1.54 billion gallons of additional fuel being consumed over the life of the MY 1986 auto fleet. It has also estimated that the maximum annual increase in fuel consumption would amount to 0.3% of annual gasoline consumption.

However, NHTSA has approached its statutory obligation to consider the need of the nation to conserve energy by viewing the energy consumption effects of its decision in the narrowest possible framework. Instead of reviewing the overall need to continue improving fuel economy over a period of years, increment by increment, in order to achieve in the end what can be very significant energy savings, NHTSA has isolated the energy consumption effects of its proposed rollback to a single model year. It has taken a small piece of the fuel economy program, which Congress considered as a whole to be one of the most important measures this nation could take to reduce its energy consumption, and declared it unimportant and of little or no weight in its decision to reduce the CAFE standard.

Viewed in such a manner, how could any one-year change in the standard, even on the order of 2 or 3 mpg, be considered important in fulfilling the need of the nation to conserve energy? It is not that individual, yearly changes in the CAFE standard required by Congress by themselves constitute significant energy conservation. It is the cumulative, long-term effect of steadily increasing standards that produce the energy conservation results that Congress intended.

A recent court decision dealt with this very issue. In Natural Resources Defense Council v. Herrington, which dealt with the Department of Energy's refusal to adopt energy efficiency standards for consumer appliances partly on the basis that individual appliance standards did not produce a significant amount of energy conservation, the court found,

> [T]he appliance program is, of course, merely one program in a vast plan encompassing five statutes and scores of initiatives. Yet DOE steadfastly refused to consider that fact in deciding how great a contribution each standard must make to national conservation

> efforts in order to be deemed significant. Commenters echoed the view of Representative Dingell, Chairman of the House Sub-Committee on Energy and Power and a member of both of the House Ad Hoc Committee on Energy and the [National Energy Conservation Policy Act] Conference Committee, that "conservation must be approached on a nickel and dime basis" and that "the cumulative impact of a series of conservation initiatives, which in themselves might appear insignificant, could be enormous...(25)

Rather than estimating, in the narrowest of frameworks, the increase in energy consumption resulting from a one year change in the CAFE standard, NHTSA should fulfill its obligation to consider the need of the nation to conserve energy by recognizing the importance of reducing future oil consumption, and the contribution toward that goal that can be achieved through steady, year-by-year improvements in automobile fuel economy.

CHRYSLER HAS MET 27.5 MPG STANDARD, PROVING IT WAS ACHIEVABLE BY FORD AND GM.

Turning now to the question of whether 26 mpg is the maximum feasible standard for model year 1986, it is important to first address Ford and GM's contention that a shift in consumer demand away from fuel efficient cars has prevented them from meeting the 27.5 mpg standard.

One of the main reasons Congress initially adopted the CAFE standards approach to improving automobile fuel economy was because consumer demand for fuel efficient cars was failing to increase the fuel economy of the nation's vehicle fleet at a fast enough rate to meet national energy conservation needs. Congress adopted standards to force manufacturers to make substantial improvements in automobile fuel economy, beyond which would be achieved by market forces alone.

Not long after the new CAFE standards had taken effect, the 1979 oil crisis caused a sudden increase in the price of gasoline and in the demand for fuel-efficient automobiles. Congress had not predicted this crisis; in fact they were completely surprised by it. The shift in consumer demand toward fuel-efficient cars made the task of improving fuel economy much easier for manufacturers. As noted in NHTSA's July 22, 1985 Federal Register notice, subsequent to the oil crisis in 1979 the American auto manufacturers announced that their CAFEs would exceed 30 mpg by 1985, after having indicated prior to the crisis that they would have difficulty meeting a standard of 27.5.

In terms of helping manufacturers meet the 1985 goal of 27.5 mpg, the crisis was a windfall. But now that the crisis is long passed, its effect on consumer demand for fuel efficient autos is being treated by NHTSA as an essential element in the manufacturers' ability to meet a 27.5 standard -- as if Congress had intended to rely primarily on sharply increased consumer demand for fuel economy improvements, and not standards.

More important, Ford and GM are blaming their inability to achieve 27.5 mpg on the very factor Congress chose not to rely on: consumer demand. NHTSA has used consumer demand for fuel efficient autos to define the maximum feasible standard to such an extent that it has defeated the intent of the standards. It has essentially rendered the standards useless. If consumer demand defines the maximum feasible standard, what do the standards achieve that the market doesn't?

But despite the recent shift in consumer demand away from fuel-efficient automobiles, Chrysler, which has been subject to the same market forces, is projected to meet the 27.5 mpg standard. It has argued that since it can achieve 27.5 mpg, such a standard is technologically feasible and economically practicable. But NHTSA disagrees, and claims that the primary reason Chrysler can meet a standard of 27.5 mpg and Ford and GM can't is because, "Chrysler does not complete (sic) in all the market segments in which GM and Ford sell cars." (26)

But there is strong evidence that despite Chrysler's sales orientation toward smaller cars, their vehicle fleet is substantially more fuel-efficient than GM's or Ford's.

First, consider measurements of fuel efficiency for the three manufacturers that ignore size and class distinctions. An internal Department of Energy report, Monthly Data Report #22, May, 1985, contains measurements of fuel efficiency for the three manufacturers for model years 1978 to 1984, expressed in terms of fuel efficiency per unit of average vehicle fleet weight, per unit of average vehicle fleet interior volume, and per unit of average vehicle fleet engine size. For all three measurements of efficiency, Chrysler performed better than Ford or GM. On the basis of mpg per unit of weight, Chrysler was 20% more efficient than Ford in MY 1984, and 40% more efficient than GM. On the basis of mpg per unit of engine cubic inch displacement, Chrysler is 20% more efficient than Ford and 50% more efficient than GM. And for the last measurement of efficiency, mpg per unit of interior volume, Chrysler is marginally more efficient than both Ford and GM. (27) (See Attachments A, B, and C.)

Second, consider another analysis done by the Department of Energy that is pertinent to this issue. DOE Monthly Data Report #14, February 1984 includes projections of what Ford and GM's CAFEs would have been if they had the same sales mix, with regard to car size, as Chrysler in MY 1984 (25):

	Actual 1984 CAFE	If sales mix same as Chrysler's
Chrysler	26.8	x
GM	24.4	25.4
Ford	25.0	23.8

As can be seen in the above table, even with the advantage of Chrysler's sales mix, GM's fuel economy would have only been 1 mpg better in 1984, and Ford's would actually have gone down. How then can NHTSA argue that size mix is the primary reason Chrysler can meet the 27.5 standard? It can't. Clearly then, Chrysler's autos are more fuel-efficient, and thus demonstrate that 27.5 is technologically feasible and economically practicable.

Of course, both examples of Chrysler's fuel economy are based on MY 1984 data and not the model year pertinent to this rulemaking, but it is highly unlikely that circumstances have changed so much that these comparisons would yield different results for MY 1986.

CONCLUSION

In light of the increasing likelihood of severe future oil problems it is absurd that NHTSA is considering a reduction in

NOTES

1. *Automotive News*, May 20, 1985.

2. Energy Information Administration, *Monthly Energy Review*, August, 1985. Total oil consumption and production figures used here and elsewhere in this testimony refer to the total of crude oil, lease condensate, and natural gas plant liquids.

3. Flavin, Christopher, *World Oil: Coping With the Dangers of Success*, Worldwatch Paper 66, Worldwatch Institute, July 1985, p. 33. Petroleum production figures are from *Monthly Energy Review*, Op. Cit.

4. Schuler, G. Henry M., Keplinger, H.F., *Persistent Oil Import Vulnerability and the U.S. Energy Response*, Center for Strategic and International Studies, Georgetown University, Washington, D.C. 1985.

5. Office of Technology Assessment, *Oil and Gas Technologies for the Artic and Deepwater*, May 1985, and Energy Information Administration, *Annual Energy Outlook 1984*, January 1985, p. 203.

6. Office of Technology Assessment, Op. Cit., p. 24, and Office of Policy, Planning, and Analysis, United States Department of Energy, *Energy Projections to the Year 2010*, Technical Report in Support of the National Energy Policy Plan, October, 1983. It is recognized that these studies were done independently and thus their energy projections are not directly comparable. Nevertheless, it is reasonable to assume that the price effect domestic production levels will have on total oil demand is small enough to make the comparison worthwhile.

7. Altshuler, Alan, et. al., *The Future of the Automobile, The Report of MIT's International Automobile Program*, Cambridge, Massachusetts, The MIT Press, 1984, pp. 107-120.

8. Office of Policy, Planning, and Analysis, Op. Cit.

9. Schuler, Op. Cit.

10. Flavin, Op. Cit., p. 31.

11. Energy Information Administration, *Outlook*, Op. Cit.

12. Office of Technology Assessment, Op. Cit.

13. Energy Information Administration, Outlook, Op. Cit.

14. Department of Energy, National Energy Policy Plan, 1983.

15. Energy Information Administration, Energy Conservation Indicators, October, 1984, p. 122, and Energy Information Administration, Outlook, Op. Cit. p. 213.

16. Based on EIA's projected total vehicle mileage for 1985 (Outlook, Op. Cit.), and 1977 fuel economy of 13.94 mpg.

17. Minerals Management Service, Department of the Interior, Gulf of Alaska Summary Report Update, May 1984, p. 5.

18. Energy Information Administration, Monthly, Op. Cit.

19. Office of Technology Assessment, Op. Cit.

20. Environmental Protection Agency, "Allocating MPG Changes to Fuel Prices and Regulatory Requirements," presentation materials for Transportation Review Board of the National Academy of Sciences, January 15, 1985.

21. Office of Technology Assessment, Congress of the United States, Increased Automobile Fuel Efficiency and Synthetic Fuels, September 1982.

22. Solar Energy Research Institute, A New Prosperity: Building a Sustainable Energy Future, The SERI Solar/Conservation Study, Brick House Publishing, Andover, MA, 1981.

23. von Hippel, Frank, Gray, Charles L., Jr.,, "The Fuel Economy of Light Vehicles," Scientific American, May 1981.

24. Williams, Robert H., testimony before House Subcommittee on Energy Conservation and Power, July 31, 1984.

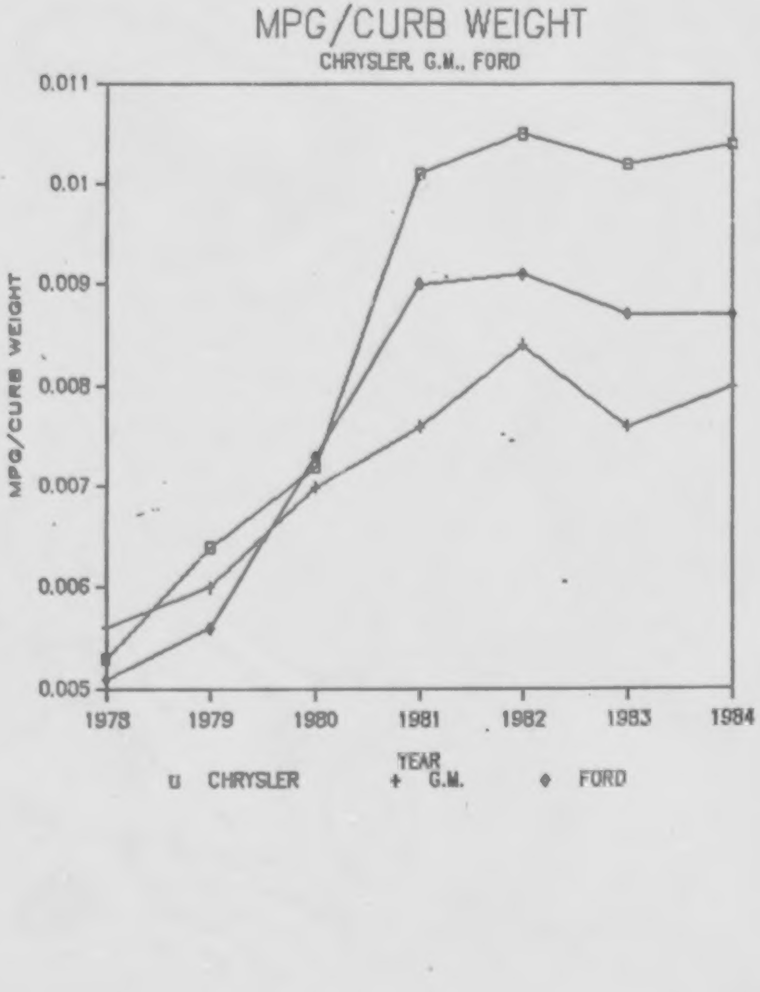
25. United States Court of Appeals for the District of Columbia, No. 83-1195, Natural Resources Defense Council v. John S. Herrington, Secretary, U.S. Department of Energy, July 16, 1985, p. 39.

26. Federal Register, July 22, 1985, p. 29916.

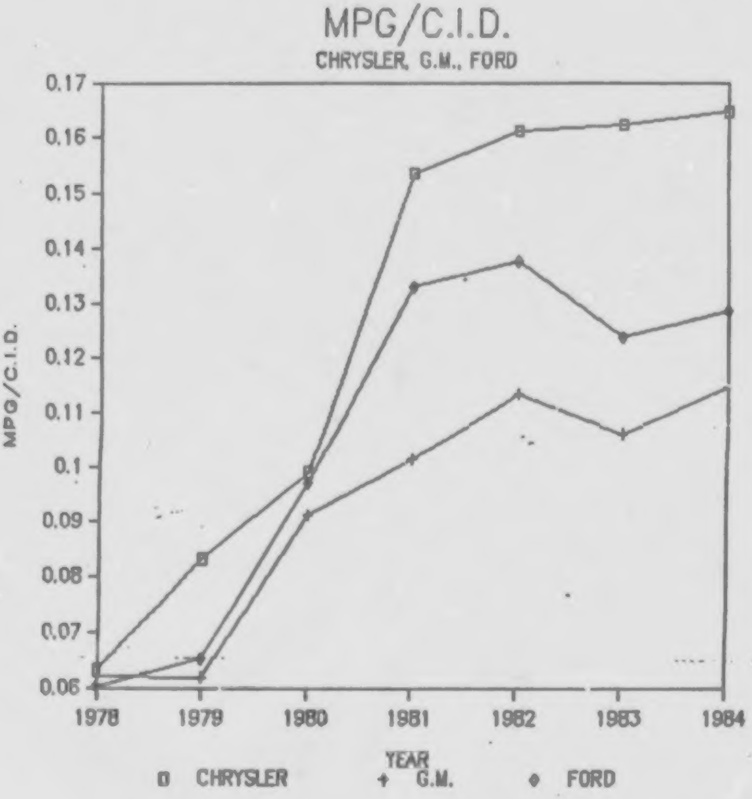
27. Department of Energy, "Monthly Data Report, #22," May, 1985.

28. Department of Energy, "Monthly Data Report, #14," February, 1984.

Attachment A



Attachment B



Attachment C

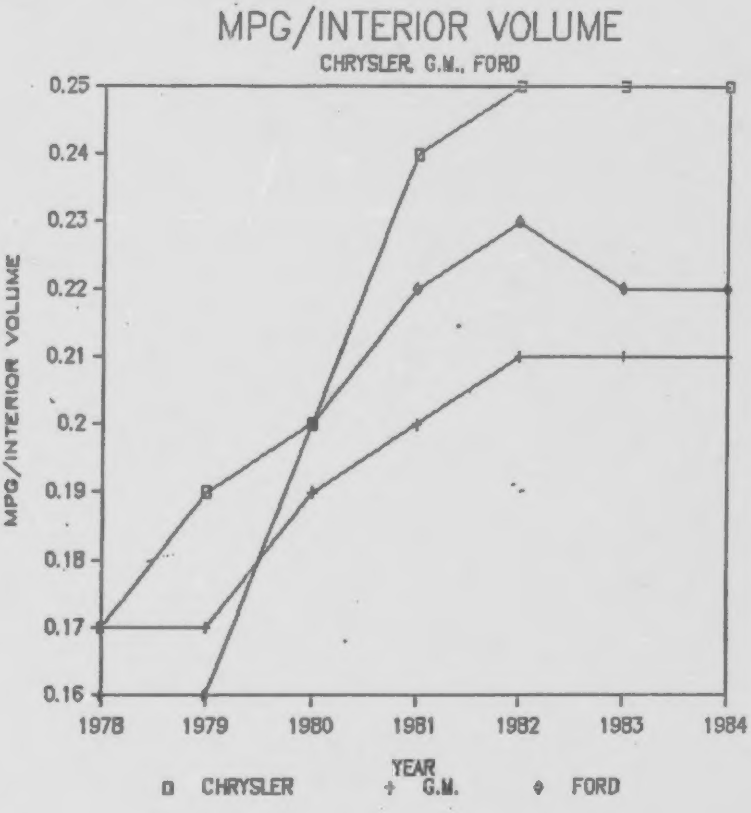


Table 1

Table 5: Oil Production, Reserves, and Reserves/Production Ratios for the World's Major Oil Producing Nations, 1984

	Annual Production	Reserves	Reserves/Production
	(billion barrels)		(ratio)
Kuwait	0.36	90.0	250
Iraq	0.43	44.5	104
Saudi Arabia	1.71	169.0	99
United Arab Emirates	0.44	31.9	73
Iran	0.80	48.5	61
Libya	0.40	21.1	52
Mexico	1.10	48.6	45
Venezuela	0.68	25.8	38
Nigeria	0.51	16.7	33
United Kingdom	0.94	13.6	14
Soviet Union	4.53	63.0	14
United States	3.79	34.5	9

ENERGY CONSERVATION COALITION

September 17, 1985

Congressman Edward J. Markey
Chairman
Subcommittee on Energy Conservation
 and Power
U.S. House of Representatives
Room H2-316
Washington, D.C. 20515

Dear Rep. Markey:

I have enclosed my answers to your pre-hearing questions concerning automobile fuel economy. Although much of my testimony deals with most of these questions in depth, I am providing here a succinct set of answers to your questions for your easy reference. Please refer to my testimony for further elaboration.

1. What role has automobile fuel efficiency standards played in America's conservation effort over the past ten years?

In 1977, the year prior to the first year CAFE standards took effect, the average fuel economy of the U.S. vehicle fleet (cars and light trucks) stood at 13.9 mpg. Average new vehicle fuel economy stood at the same level. However, 1985 average vehicle fleet fuel economy is expected to reach 18.4 mpg. (A number on new vehicle fuel economy in 1985 is not available from the Department of Transportation.)

Without this improvement in auto fuel economy the U.S. would now be consuming an addition 1.5 million barrels of oil per day (MMB/D), all of which would have to be imported.

Department of Energy and Department of Transportation officials have argued recently that the fuel economy improvement of U.S. vehicles was mainly due to market forces and that fuel economy standards had little to do with the improvement. However, an Environmental Protection Agency presentation prepared for the Transportation Research Board of the National Academy of Sciences concluded that 82% of the improvement was due to

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Conservation Foundation • Environmental Action • Environmental Defense Fund • Environmental P nstitute • Federation of American Scientists • Friends of the Earth • League of Women Voters of the United States • National dubon Society • National Consumer Law Center • National Consumers League • Natural Resources Defense Council • National Wildlife Federation • Public Citizen • Sierra Club • Solar Lobby • Union of Concerned Scientists • United Methodist Church—Board of Church & Society

regulation (CAFE standards and gas guzzler tax) and 18% was due to fuel price response. In another presentation to the same board, K.G. Duleep, of Energy and Environmental Analysis, Inc. concluded that the standards had played an essential role in pushing manufacturers to improve fuel economy faster than they otherwise would have.

2. How much oil is consumed by passenger automobiles? What are the trends regarding vehicle miles driven and vehicle oil consumption?

As can be seen in the table below, vehicle miles driven has increased since 1981, but the number for 1984 is not yet available, so it is difficult to ascertain whether this trend is continuing.

VEHICLE MILES DRIVEN IN THE U.S.
In Billion of Miles

1973	1016.9	1980	1111.9
1974	990.7	1981	1109.8
1975	1028.1	1982	1133.9
1976	1075.8	1983	1149.7
1977	1118.6	1984	NA
1978	1171.1		
1979	1140.5		

Almost all motor gasoline supplied in the U.S. is consumed by vehicles.

FINISHED MOTOR GASOLINE SUPPLIED
In Millions of Barrels of Oil Per Day

1973	6.67	1979	7.03
1974	6.54	1980	6.58
1975	6.67	1981	6.59
1976	6.98	1982	6.54
1977	7.18	1983	6.62
1978	7.41	1984	6.69

3. What effect would a rollback of CAFE standards have on America's conservation efforts? How much extra oil would be consumed if CAFE standards were rolled back for MY 1986? 1987? 1988?

Even though Ford and GM have asked for a permanent rollback of the passenger auto CAFE standards, NHTSA has broken the request into pieces, dealing now only with a rollback of the model year 1986 standard, and later with changes in subsequent model year standards. A one year change by itself, even if it were 2 or 3 mpg, does not produce a large change in our nation's energy consumption. Rather, it is the cumulative effect over time of successive increases in fuel economy standards that can produce very significant energy savings. And since we face enormous energy problems in the not too distant future, good sense and good policy dictates that we continue increasing standards to better prepare ourselves for that future.

According to NHTSA, reducing the model year 1986 passenger auto CAFE standard will increase oil consumption 37 million barrels over the life of the 1986 fleet. We have reviewed their methodology for determining this number and have found it sound. Neither NHTSA nor the Energy Conservation Coalition have made projections on how much a decrease in the 1987 and 1988 standards would increase oil consumption, but it is reasonable to assume that the amount would be similar for each year, meaning the cumulative effect of a three year rollback would be about 111 million barrels. However, if the energy effect of the rollback is compared with standards above 27.5 mpg for this period of years, instead of with 27.5 mpg, the increased energy consumption is even greater.

4. How much oil does the United States import from OPEC nations? How has this dependency on Mideast oil changed over the past five years? What will our dependence be on Mideast oil in the future?

The U.S. imported 2.05 million barrels per day of oil from OPEC nations in 1984. Our historical imports rates are listed below. It is difficult to determine how much oil the U.S. will import from the Mideast in the future, but as pointed out in my testimony, U.S. oil imports are expected to grow substantially (to 7 to 9 MMB/D by mid-1990's). Since it is unlikely that non-Mideastern countries will be able to supply that demand, and since most of the world's oil resources are concentrated in the Mideast, it is highly likely that most of that expected increased demand for imported oil will be met with oil from the Mideast.

U.S. OIL IMPORTS FROM OPEC NATIONS
In Millions of Barrels of Oil Per Day

1973	2.99	1979	5.64
1974	3.28	1980	4.30
1975	3.60	1981	3.32
1976	5.07	1982	2.15
1977	6.19	1983	1.86
1978	5.75	1984	2.05

5. Is America energy independent? What are your projections for our future energy needs? Will America be more or less energy

independent ten years from now?

America is not energy independent. We are still importing a third of the oil our nation consumes. The Energy Conservation Coalition does not make independent projections for future U.S. energy needs, but as pointed out in my testimony, projections made by numerous government agencies show that future demand for oil, and a reduction in domestic production of oil, will require the importation of an increasing amount of oil, making this country less energy independent than it is now.

6. What are the current energy reserves of the United States? How will these reserves change by 1990? By 1995?

As reported by the *BP Statistical Review of World Energy* the U.S. oil reserves stood at 34.5 billion barrels in 1984, their lowest level since 1951. To our knowledge no projections are made on future oil reserves.

7. Are the CAFE standards included in H.R. 1024 a realistic goal? How much oil would be saved if these standards were enacted into law?

The standards contained in H.R. 1024 have been shown to be technologically and economically feasible by numerous studies, including ones by Dr. Frank Von Hippel of Princeton University, the Solar Energy Research Institute, and the Office of Technology Assessment. Dr. Robert Williams of Princeton University has estimated that in comparison to holding average fuel economy at levels already mandated for 1985, the standards in H.R. 1024 could save 2.2 MMB/D by the year 2010.

Thank you for the opportunity to provide you with information on this issue.

Sincerely,

Marc Ledbetter
Policy Director

STATEMENT OF ROBERT W. CRANDALL

Mr. CRANDALL. Thank you, Mr. Chairman. It is a pleasure to appear here and talk about this issue. I am unfortunately going to be a heretic in this group. I think I agree with the chairman of the full committee, Mr. Dingell, that it's unsightly and unseemly to have these automobile companies arguing before Congress over this issue. In fact, I have heard for years that the automobile companies have been plagued by excessive regulation. I'm surprised that nobody among the automobile company representatives suggested that maybe we should abolish the entire CAFE program, which is indeed what I shall suggest today.

I think it's also unfortunate that a man as talented as Mr. Sperlich should be taken away from Detroit where he could be attempting to manage Chrysler Corp. against his rivals in terms of introducing fuel-efficient new cars, and instead is called up here to spend his time arguing before Congress.

It seems to me that there was a case perhaps for CAFE standards in the late 1970's, the mid-1970's, when the statute was passed. The Government had to undo with one hand what it had done with the other—that is, we had controls on the price of crude petroleum and refined products, and as a result, we had created an artificial incentive to overconsume petroleum products.

Fortunately, we have abandoned that policy, starting in about 1978 up until 1981, and at the present time, we have no price controls on petroleum. And as we know, the price of petroleum products has been declining; they have declined about 8 percent since 1981. The CPI price of motor fuel has declined about 8 percent in a time when inflation has continued at a modest pace, so that the real price has declined even more than that.

I don't see a rationale for regulation in this particular case, such as that which may exist in emissions regulations for automobiles, or that which may exist for safety regulation. In the case of emissions, we don't have a market for fouling the air, and as a result the Government has to do something in order to provide the proper incentives, the proper property rights, or the proper regulations to reduce the tendency to overfoul the air.

The same would be true for safety. There is not a sufficient incentive for people to look out for the danger which they may be exposing others to when they are driving their automobile, and one can make the case for regulating the automobile on that grounds.

In the case of fuel economy, I can see no reason why consumers can't choose between the fuel efficiency of the car, the performance characteristics of the car, and the price of that car. They do it every day when they choose window air-conditioner units, heat pumps, refrigerators, and furnaces. Certainly, they can do it just as well for automobiles.

There may be some residual case for raising the price of petroleum products above the world market level now on the grounds that we think somehow the market is making an error and, in fact, all of the future predictions that Mr. Ledbetter made will come true, and there will be upward price pressure in the future.

If that is the case, it seems to me that what we should do is to put a tax on all oil products, not simply have regulations for fuel standards for automobiles. Otherwise, what we will be doing is forcing ourselves to conserve fuel only in the purchase of automobiles, but allowing lower market prices to be used, in the choices of all of these other products that I mentioned earlier.

Now if we continue the CAFE standards, I think a number of things are predictable. First of all, companies will be induced to invest more than $1 for each dollar's worth of present value of fuel savings which are generated by that investment.

Second, new car sales will be depressed by these additional costs, which are going to go into the car to save fuel, in excess of what customers want.

Third, customers will be offered less performance than they would otherwise choose—that is, the value of the total automotive product, and that's what the economic system is trying to deliver, will be reduced.

And finally there will be an artificial incentive to keep older, large cars in use much longer than they otherwise would be, because we will not want to pay the excessive price for conservation in new, larger cars. We will just keep the old ones we have, which have much lower fuel economy than the new car mix.

So if we choose to continue CAFE, it seems to me, what we are likely to do is to depress car sales, induce people to keep gas guzzlers longer, and not only that, but only squeeze down on one part of the energy consumption problem.

Let me say also that in some research which I have done, which will be published in a Brookings Institution book at the beginning of next year, I do not find the results that Mr. Ledbetter suggest. That is, I find that before CAFE, Chrysler actually had more fuel-efficient cars per unit of weight and engine displacement, but that since CAFE, General Motors and Ford have had a more rapid technological improvement and that by 1983, had surpassed Chrysler. In fact, the way in which Chrysler has managed to exceed CAFE is by abandoning the large cars. They did this at a time when they were in great financial difficulty, and shortly after the time that they had greatly reduced their engineering staff because of these financial difficulties.

So I don't think it is possible to say that Chrysler has achieved the CAFE standards because of greater expenditures on engineering.

Let me conclude by saying that if Congress thinks it can outguess the oil market, the appropriate strategy is to replace CAFE with a tax on all users of oil, not just on gasoline used in new model cars.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Crandall follows:]

Testimony of Robert W. Crandall* before the Subcommittee on Energy, Conservation & Power of the House Committee on Energy and Commerce

September 19, 1985

Mr. Chairman and members of the subcommittee, I am here today to testify in favor of complete abolition of the CAFE program. It is doubtful that government regulation of fuel economy has ever made much economic sense, but the slim case that could be made for it in 1975 is now irrelevant. Price regulation for oil and refined products has been abandoned; therefore, the government-contrived need for fuel economy regulation has disappeared.

The Rationale for Regulation

In our economic system, the case for government regulation is generally based upon some concept of market failure. Monopoly, externalities such as pollution, or the difficulty in assigning property rights are often cited as reasons why certain markets do not perform well to allocate resources. For example, we regulate automobile pollution because there is no market for the right to discharge noxious matter into the air and therefore no incentive for automobile producers to limit emissions without government regulation. We regulate automobile safety partly because the buyer of a car does not have sufficient incentive to purchase a car that does not expose others to the danger of a collision with him.

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* The author is a Senior Fellow at the Brookings Institution. The views set forth here are solely those of the author and do not necessarily represent the opinions of the trustees, officers or other staff members of the Brookings Institution.

To find a justification for government regulation of the fuel economy of automobiles, however, one has to look elsewhere. Presumably, consumers are able to judge for themselves the trade off between fuel economy, the cost of an automobile, and the car's performance. The market price of gasoline provides the incentive to economize on gasoline consumption. If gas guzzlers result in excessive operating expenses, consumers can choose smaller cars, less performance, or more carefully engineered cars. This decision is no more difficult than, say, choosing between a more expensive, energy-efficient air conditioner and one whose original cost is lower but which uses more electricity.

The Rationale for Fuel Economy Regulation

The only "market failure" in the case of automobile fuel consumption was caused by government itself. When the Congress acted in 1975 to establish the CAFE program, gasoline prices were being restrained by federal price controls. These controls provided automobile buyers with the artificial incentive to choose less fuel-efficient cars than they would have if the price of gasoline had been allowed to rise to market clearing-levels.

In the late 1970's, we began to phase out crude oil and refined products price controls. By 1981, the price of gasoline had risen to a market clearing level at about 1.9 times its real 1974 level. This provided an enormous incentive for buyers to choose more fuel efficient cars and for domestic producers to offer them. By 1981, the average new U.S. automobile was nearly 80 percent more fuel efficient than its 1974 counterpart. Much of this improvement was the result of reduced size and performance, but about 30 percentage points were due to improved engineering.

CAFE Since 1981

In research that will be published by Brookings early next year, I and my colleagues have estimated that the actual improvements in fuel economy by the 1981 model year were just about what one would have expected given 1981 gasoline prices. Since that time, however, the CAFE standard has risen from 22 to 27.5 miles per gallon while the price of gasoline has fallen by about 7 percent. Consumers are now quite rationally choosing larger, less fuel efficient cars, making achievment of the CAFE standard difficult and ultimately quite costly.

The Implications of Continuing the CAFE Program

If CAFE remains and if it is set at or near its legislated 27.5 MPG level for the next few years, we may safely predict that:

1. Consumers will be forced to pay more than $1 for each additional $1 in the present value of reduced fuel consumption engineered into new cars.

2. New car sales will be depressed by the additional cost and, therefore, price of each size-performance option.

3.Consumers will be offered less performance and comfort per dollar than they would have been offered with CAFE.

4. Older, gas guzzling cars will be kept on the road longer than they would have been without CAFE regulation because consumers will find the new models less attractive.

Why Continue CAFE?

Given that we now allow the price of gasoline to rise and fall with market conditions, why do we continue to instruct manufacturers and, therefore, consumers on their choice of fuel economy? The answer seems to be that we must use government regulation to conserve scarce liquid fossil fuels--even if their prices are falling--because they are finite in supply or subject to disruption in supply. So too are copper, lead and aluminum. These latter materials have also been subject to downward price pressures in recent years, reflecting shifts in the demand-supply balance since the more hectic 1970's. Should we also regulate the copper content of producer and consumer durables? Or the aluminum content of aluminum siding? What is it that makes gasoline different?

One might argue that the disruption caused by a sudden reduction in the supply of oil (and refined products) is likely to be far worse than the damage that could be caused by, say, Zambia, Zaire, Chile, and Peru if they chose to curtail copper exports. This may be true, but it is likely to be as true for a steady state consumption of 5 million barrels of gasoline per day as 10 million barrels per day. Once the supply system adjusts to lower consumption of gasoline, forced by government, disruptions are likely to be just as severe.

Alternatively, one might argue that the current market price is below its equilibrium value and that we cannot allow consumers to consume it profligately at these prices. But how are we to know whether it is too high or too low? Can the Congress predict the price of oil in five or ten years? I would suggest that it is unlikely that a societal consensus in the Congress is a better predictor of prices than the market. Would anyone have predicted in 1973 or 1974 that commodity prices would generally be so low in 1984-5? I doubt it.

A Modest Proposal

If the Congress is convinced that future energy shortages are a real possibility and that these shortages are likely to be exacerbated by excessive consumption over the next few years, it should use the most direct and efficient incentive for reducing consumption--a specific tax on the substance to be conserved. An excise tax could be imposed on all oil products, raising the price of all refined products, not just the cost of using gasoline in new cars. This would not only be more efficient, but it would be more effective. Why encourage gas guzzling in older cars by continuing CAFE? Why should heating oil or industrial lubricants be used wastefully? To focus only on new automobiles is wasteful and inefficient. CAFE should be abolished. If Congress wishes to outguess the oil market, it should place a higher federal excise tax on all oil consumed in the country, but it should be prepared to rescind such a tax if the current decline in oil prices is not reversed in a few years.

Mr. **Markey**. Our final witness is Ms. Deborah Bleviss from the Federation of American Scientists.

STATEMENT OF DEBORAH LYNN BLEVISS

Ms. **Bleviss**. Thank you.

The focus of my remarks today will be on the technological potential for fuel economy. I think it is rather unfortunate that this hearing has concentrated on the 26 versus 27.5 miles per gallon target which, while an important issue, fails to address a more important issue, namely the future for the automotive industry in this country.

If we look out over the horizon, we see two major problem areas that are soon to strike the auto industry. In fact, the industry is already dealing with them. One is enhanced competition from abroad, which has already, as you have heard from the figures today, had a noticeable effect on domestic sales. That competition has led Chrysler to predict that by 1990, only 50 percent of domestic sales—of car sales in the United States—will be attributable to domestic manufacturers.

Following that, there is the issue of what will happen in the 1990's with oil imports. I think that the numbers are quite startling, especially considering that it was our own Department of Interior that recently adjusted down by 55 percent its estimates of domestic offshore reserves. What that means, by simply using those figures and extrapolating out to the year 2000, is that we could be reaching imports of greater than 10 million barrels a day. That's more than we have ever imported before, even during the height of our dependence on Arab OPEC.

What does that mean for fuel economy?

I think, first of all, it is important for us to realize that this fuel economy or the glut that we have seen in this country is not symptomatic solely of this country. The Europeans are dealing with this problem; so are the Japanese. In fact, some Japanese manufacturers—Toyota, Mitsubishi—are having tremendous difficulty meeting their 1985 CAFE.

But the interesting thing is that despite a global relaxation in fuel economy interest these manufacturers are not stopping their pursuit of fuel-efficient technologies. They are all moving ahead into the next generation of fuel-efficient technologies.

Why? Because there is a variety of multiple benefits that derive from these technologies beyond just fuel economy. And I have listed a few of them. Comfort is one; higher performance value is another; greater competitiveness by sporting state-of-the-art technology is another. All of these companies have moved ahead in development of the next generation of fuel-efficient technology.

What about the American companies? Well, I have been conducting a research project for the last 8 months, looking at the state of fuel-efficiency research and development around the world, and the first table I have submitted as part of my testimony shows the state of that research.

If you look down it, the American companies do not look that good. They are not coming out well. In fact, as we could probably have predicted, the Japanese companies have moved research and advanced fuel economy development the furthest and are the closest to production. What that means is that the competitive pressures that the companies are going to be feeling in the next 5 years and beyond have not produced the kind of advanced development that would enable them to meet those competitive pressures.

What does this all have to do with CAFE?

Well, I think some sort of Government push is appropriate to look at whether it's a CAFE standard or some other sort of standard. CAFE did push the domestic manufacturers into producing the first generation of fuel economy research.

So what we are looking at is some need, some need to establish some kind of incentive to get the American domestic producers to move into the next generation of fuel economy development before they are beaten out once again by their foreign competition.

And I would submit that we look at that aspect as much as we look at the contribution to reduction in imports as an important criteria to judge the efficiency of future fuel economy policy.

Mr. Markey. Thank you very, very much, Ms. Bleviss.

[Testimony resumes on p. 432.]

[The prepared statement of Ms. Bleviss follows:]

Deborah Lynn Bleviss
Bernard Lee Schwartz Fellow,
Energy and Environment
Federation of American Scientists

Mr. Chairman and Members of the Subcommittee, I appreciate this opportunity to submit testimony before you on the subject of automotive fuel economy. My name is Deborah Lynn Bleviss and I am the Bernard L. Schwartz Fellow in Energy and Environment at the Federation of American Scientists, a public interest organization involved in issues of science and society which boasts among its members half of the living American Nobel laureates. For the past eight months, I have been working on a research project assessing the future for automotive fuel economy both domestically and abroad. The results of that project will be highlighted in this testimony, which will focus on the feasibility and likelihood of further improvements in automotive energy efficiency as well as the reasons why achievement of higher efficiency levels is important.

The Role of the 1985 CAFE Standard

We are here today because two American automobile manufacturing companies, Ford and General Motors (GM) have requested a rollback of the 1986 Corporate Average Fuel Economy (CAFE) standard on automobiles from 27.5 miles per gallon (mpg) to 26 mpg. Neither will be meeting the current standard, and both blame their shortfall on changing consumer tastes in light of the enduring oil glut that threatens more to further lower oil prices rather than raise them. I will leave to others to discuss the legitimacy of this claim.

But it is important to examine what the standard has done for auto companies to date. Both Ford and GM claim that the standard's effect has been minimal, with market demand providing the primary incentive for developing fuel efficient cars. Yet, considering the historic five-year lead time required by domestic companies to bring a new model to market, it is hard to believe that domestic new models introduced in the late 1970s and early 1980s were not, in fact, designed in response to the standard. After all, consumer demand for high fuel economy only materialized in 1979; thus, one would not expect new models put forth in response to this demand to appear until 1984 at the earliest. Yet, fuel efficient models were obviously appearing earlier--these include GM's X-body in 1979, J-body in 1981 and A-body in 1982, Ford's Escort in 1981 and Tempo/Topaz in 1983, and Chrysler's K-body. Needless to say, even though decisions to develop these models preceded market demand for fuel economy, the demand that did eventually appear in 1979 obviously played a role in encouraging automaker decisions to proceed with fuel economy development, for they could clearly see a market for the new models.

While the issue of the standard's role in promoting the development of new efficient model lines has been highly visible, a second, and equally important, effect of the standard has received considerably less visibility. In short, the standard has served to take some of the uncertainty out of corporate planning. The state of the oil market has see-sawed dramatically in the ten years that the CAFE standards have been in effect, and so accordingly has the demand for fuel economy. Such a market is very difficult to design cars for. In the absence of CAFE standards, the auto companies would undoubtedly have formulated a policy of hedging their bets, trying to keep all contingencies open, much as they are doing today. Such a policy is quite costly, for it ties up resources to develop a whole spectrum of models that will allow the companies to shift rapidly with the tides. In the mean time, few resources are left for the innovative model development (e.g. Chrysler's minivan and GM's Fiero) that can gain new market shares, a necessary strategy to operate in a highly competitive market.

The CAFE standards took this uncertainty out of the market for the auto companies--they had a clearly defined target that they had to meet. As such, they could free up resources to develop minivans and sports cars. It is important to note that regardless of whether the standard is 26 mpg or 27.5 mpg, this benefit of the standard no longer exists; the industry has no target to work towards for the next ten years. Instead it has laden itself with a policy of "hedging its bets", yielding a hodgepodge of often contradictory directions. Promises have been made about developing a domestic small car that can compete with Japan at precisely the same time corporate Asian policies have been announced--just in case the market swings away from small cars rendering their domestic production not cost-effective. And on top of these decisions are plans to develop new large vehicles such as Ford's Panther and GM's "people mover". In short, the industry does not have a good idea where it is headed; this is well-illustrated by the fact that no firm model plans have been made for 1990 and beyond, only four model years away. As Automotive News stated in its September 9, 1985 edition, "As things now stand, automotive planning, at the end of the decade, falls into a black hole of confusion and debate over potential new markets and new technologies."

Competition in the Years Ahead

Unfortunately, while no time is a good time for industry indecision, now is precisely the worst time for such indecisiveness. For the coming years will see competition in the domestic American market the likes of which we have never seen before. Japanese and European manufacturers have home markets with little potential for growth. Thus, efforts are expected to intensify in future years to sell abroad, both in the U.S. (where both have identified potential growth in market shares against domestic manufacturers) as well as in the developing world. The implications for both U.S. industry and workers are alarming. Earlier this year, the U.S. Department of Commerce completed a study that projected a drop in sales by domestic manufacturers by some 1.4 million units as early as 1988 (as compared with 1984)--virtually to the recessionary levels in the early 1980s--even though total U.S. sales were projected to increase by about .8 million units in that time period. Should this come to pass, the net effect will be a loss of about 125,000 jobs at U.S. auto companies and their suppliers, a number that will be somewhat offset by employments gains of some 15,000 to 20,000 workers at U.S. assembly plants of Japanese companies and their U.S. suppliers. Evidence that the Commerce study is not out of line is demonstrated by Chrysler's recent statement to its suppliers to expects domestic models to account for only one-half of all U.S. car sales by 1990, with imports taking 39 percent of all sales and U.S.-built Japanese cars the rest (Ward's Automotive Reports, 8/12/85). (This compares with 1984 figures in which domestic models took 75.5 percent of sales, imports 22.8 percent and "hybrids" 3.7 percent.)

What does all this have to do with fuel economy? The answer is a lot. It is important, first of all, to note that the current slackening of consumer demand for fuel economy is not limited to the U.S. My research has revealed the same phenomenon in many European countries, most notably Sweden and West Germany, where, for example, declining consumer interest in efficiency has led Volkswagen's decisionmakers to de-emphasize its role as a fuel economy leader in favor of other marketing strategies. And in Japan, the so-called "power wave" (so named because of consumers' increasing demand for more automotive power) has left both Mitsubishi and Toyota struggling to meeting their weight-based 1985 fuel economy standards.

Yet, despite the "power wave" currently gripping the industrialized world, automotive companies are continuing their efforts in fuel economy research and development, yielding a multitude of technologies near commercialization. Why? The simple answer is that most of these technologies yield benefits that extend far beyond fuel economy. With the rapidly rising cost of today's light vehicles, assurances of vehicle durability so that they will last longer are increasingly important to consumers; substitution of new materials, especially plastics and ceramics, promises to meet these new demands. Low maintenance costs is another consumer demand; technologies such as flywheel on-off systems are important because they may be able to extend the life of a car's engine. Comfort is also receiving increased buyer emphasis, and such fuel efficient technologies as variable displacement air conditioners (which eliminate the problem of engine surging as today's compressor's are cycled on and off) and continuously variable transmissions or CVTs (which eliminate the noticeable jerking of automatic transmissions) meet these needs.

In addition, the increasingly sophisticated car buyer is becoming more interested in buying cars that are "state of the art"; such fuel efficient technologies as electronically-controlled engines and transmissions, new materials, CVTs, and improved aerodynamics fall into this classification. Finally, companies are developing fuel efficient technologies because they see them as providing useful marketing advantages; while fuel economy alone will not sell a vehicle, if all other features of that vehicle are similar to its competitors, a superior fuel economy could potentially persuade the buyer to purchase that vehicle.

Recognizing the multiple benefits of fuel efficient technologies, the obvious question is whether domestic companies are moving ahead with their development with all due speed. The answer, unfortunately, is no. Attached to the testimony is a table showing the advanced fuel economy innovation my research has uncovered is currently being undertaken by automotive companies. Companies are only listed if they have a significant effort on-going. As can be seen, while American companies have a presence in many of these areas, it tends more often than not to be in the research end of the spectrum rather than in advanced development. In contrast, the Japanese companies have proved quite strong in the advanced development end of the spectrum; in fact, many of these technologies are already in early stages of production. And European companies have proved quite strong in advanced prototype development, an important bridge to production. (It is important to note that the information shown in this table was gained through published materials and company interviews. Therefore, it was highly dependent on how forthcoming companies were with me.)

This information is disturbing for it paints a picture of a domestic industry not yet prepared to operate in the highly competitive market of the future. Historically, American companies have been seen in the industry as being slow to bring new products to the market. They have generally followed another company's lead; yet, they have not suffered because they operated in a fairly protected market. Thus they could avoid risk without losing market shares. But the world has changed. And while American manufacturers are claiming to have adapted to the new environment, pointing to such projects as GM's Saturn and Trilby, Ford's Alpha, and Chrysler's Liberty and Genesis as evidence that they are preparing to lead the way, in specific technologies with fuel economy and other benefits, these companies are still not undertaking the advanced development necessary to introduce new products before their competitors.

Many may look at the information presented in this table and conclude the domestic automotive industry may need a "push" to maintain its competitiveness. With this in mind, it is useful to examine the role of the 1985 CAFE standard in maintaining the competitiveness of the American industry over the past decade. For together with market pressures, it spurred the development of such technologies as front wheel drive powertrains, electronic fuel injection systems, four-speed automatic transmissions with lock-up clutches, improved aerodynamics (now the trademark of the new Ford model lines), and materials substitution. These technologies enabled domestic automakers to maintain a "state of the art" image at a time when the Japanese companies were surging ahead in technology development. A similar technology push, such as the policies proposed in H.R. 1024, would very likely have a similar positive effect for the next ten years.

The Future Without New Fuel Economy Policies

The obvious question to be asked at this point is what will happen if national policymakers fail to establish fuel economy policies for the future, as they are presently inclined to do? Over the short term, the fuel economy of domestically produced cars will likely continue to rise, largely due to the residual effects of the 1975 CAFE law as penetration of the fuel economy improvement technologies developed over the last ten years is completed on all model lines; domestic fleet fuel economies will probably be approaching 30 mpg by 1990. At the same time, however, foreign competitors can be expected to be introducing new fuel economy technologies, simultaneously carving out new market niches for themselves as well as further improving their fleet fuel economies. Examples of such technologies include Subaru's CVT, Toyota's ultra-lean-burn engine, and Isuzu's ceramic engine components.

Beyond 1990, new domestic car fuel economy is much more difficult to predict since, as mentioned earlier, automakers' product plans have yet to be made. However, with multi-year lead times, product plans for the early 1990s will have to be made in the next few years. The current state of infancy of many developmental efforts in new fuel economy technologies combined with the tough financial times projected for the auto companies in the next five years probably mean that manufacturers will opt for product lines where fuel economy gains will flatten out. Any concerns about renewed consumer interest in fuel economy will probably be allayed by recent projections by the Department of Energy (DOE) that oil imports will stay low through the end of the century and worldwide oil supplies will only begin to tighten towards the end of the 90s.

Unfortunately, these rosy forecasts of the oil market will probably not hold up. While press reports have been laden with accounts of OPEC's troubles and the potential for plunging oil prices, scant attention has been paid to the Department of the Interior's recent adjustment downward by 55 percent of this country's estimated economically recoverable offshore oil reserves. As projected by the Office of Technology Assessment, this means that domestic production levels will lie in the range of 4 to 7 million barrels per day (MMBD) by the end of the century rather than the 8.7 MMBD presently projected by DOE. Assuming DOE's projections of future oil demand, imports could be at record high levels--in excess of 9 MMBD--by 1995. And should DOE's oil demand figures prove too optimistic--1985 transportation oil consumption has already been underestimated by a quad--with demand coming closer to that projected by the Gas Research Institute, imports could be more than double their present level by the end of the century! The effect of this sharply reduced U.S. production on the world oil market will be pronounced, straining the capacity of other world producers to levels higher than was seen during the turbulent 1970s. In such an environment, oil prices will undoubtedly skyrocket and politically-motivated supply interruptions could once again occur.

The domestic auto industry, already suffering the ill-effects of increased competition at home, could potentially be crippled by these set of events. Saddled with a fleet that delivers fuel economy close to 30 mpg, including many larger cars, when consumers are calling for the highest fuel economy that technology can deliver, the industry would undoubtedly see its already reduced market shares eroded further.

The nation would suffer as well, seeing a replay of the 1973 and 1979 oil crises. And the brunt of the crisis would be felt in the transportation sector, which has been steadily increasing its share of national oil use from 54 percent in 1973 to 62 percent in 1984. Enhancing the fuel economy of the nation's vehicles could offer some protection against this ominous outcome. For example, achieving the levels called for in H.R. 1024 could compensate for about 1.5 million barrels of lost production capacity by 2000. Moreover, if the U.S. were to adopt an aggressive fuel economy policy for the next 10 years, much of the rest of the world would likely follow as they did after adoption of the 1975 CAFE law. And if the world industry were to achieve H.R. 1024's fuel economy levels, some 7 1/2 to 10 million barrels per day would be saved, more than enough to compensate for the loss of U.S. production capacity, even in the worst of cases. (Figures are from the testimony of Robert Williams, Senior Research Scientist at Princeton University's Center for Energy and Environmental Studies before this Subcommittee on July 31, 1984.)

Setting the Course for Higher Fuel Economy

The conclusion to be reached from the discussion so far is simple: pursuing a strategy of deliberately increasing automotive fuel economy beyond what market pressures will deliver will prove a boon to both the domestic automotive industry and the nation as a whole. Through the end of this decade, it will spur the domestic industry to develop new technologies that will enable it to compete better with its foreign counterparts. And in the next decade, it will provide a cushion against the projected loss in domestic oil production.

What levels of fuel economy will be technically feasible by 1995? In recent years, this question has become easier to answer because a variety of automotive producers have developed fuel efficient prototype vehicles. These are shown in Table 2. The figures are indeed impressive: in several cases the highway fuel economy of these vehicles is pushing 100 mpg! Moreover, these high fuel economies have been achieved without incorporating many of the promising advanced fuel economy technologies listed in Table 1, for example, the use of ceramics in engines, continuously variable transmissions, and flywheel storage systems.

After the second oil crisis (in 1978-79), a series of studies were launched to answer the question of what was technically feasible by 1995. Studies by the Department of Energy and the Office of Technology Assessment concluded that CAFEs ranging from 39 to 65 mpg were feasible. These figures were reached by assuming consumer shifts to smaller cars, greater penetration of diesel engines, and the appearance of some higher technologies.

Today, it appears these studies overestimated the shifts in consumers' tastes--the market shift to small cars has been weak in recent years and diesel sales have dried up--but considerably underestimated the role that technology could play in improving fuel economy. Indeed, last year some Ford researchers published an article in Science (August 1984) that projected these technologies could yield an "average" vehicle in the late 1990's whose highway fuel economy would be in excess of 100 mpg. (Such a vehicle they projected would hold four or five passengers, have a highly aerodynamic body with fiber and plastic composite panels, and be operated by an electronically-controlled, turbocharged, ceramic, adiabatic diesel engine and a CVT.)

The figures shown in Table 2 and those of the Ford researchers make the targets contained in H.R. 1024 of 45 mpg for automobiles and 35 mpg for light trucks by 1995 seem quite tame. Nevertheless, these targets fulfill the role of providing a moderate technology push for the industry over and above what it is presently doing. At the same time, the relatively low levels of the targets leave automakers with the flexibility to pursue a few key technologies rather than having to make a "full court press" on all.

The Costs of Pursuing Increased Fuel Economy

Inevitably, when the subject of increased fuel economy is raised, naysayers will argue that higher efficiency can only be achieved at the cost of safety, low emissions levels, performance comfort, and reasonable prices. It is worth examining each of these areas to determine the accuracy of these claims.

A. Safety

One can design an unsafe car at any level of fuel economy. If fuel economy is achieved simply by "downsizing" a vehicle without changing its structure significantly, its safety will undoubtedly suffer. But the weight of a vehicle can also be reduced while using materials and a body design that enhances structural integrity and strength, and therefore safety. This was the approach taken by Volvo engineers in designing their prototype LCP 2000. The car was structured to withstand frontal and side impacts of 35 miles per hour and a rear impact of 30 miles per hour. These are stricter safety levels than today's cars are subjected to in this country.

B. Emissions

Emissions concerns arise with higher fuel economy strategies because these inevitably involve the increased use of diesel engines, which emit on average about 100 times the weight of particulates produced by their gasoline counterparts. Yet, here too, technological innovation can make a difference. Mercedes Benz and Volkswagen have now developed emissions control devices that enable them to meet the strict 1986 California particulate requirement of .2 grams/mile. And Isuzu has improved the combustion of its new 2.8 liter direct injection diesel truck such that it will require no aftertreatment at all to meet the California standard.

C. Performance

Many believe that a car with high fuel economy must necessarily be sluggish on the road, accelerating poorly and making entry onto a highway or passing another vehicle difficult. Yet, the Volvo LCP takes only 11 seconds to accelerate from 0 to 60 mph. In contrast, the popular automatic Chevrolet Cavalier, with a fuel economy of 28 mpg, takes more than 17 seconds.

D. Comfort

Another concern about fuel economy voiced by consumers is that they will have to forego roominess in the vehicles they purchase. Yet, many of the prototypes listed in Table 2 as well as the average car projected by Ford researchers are designed to hold four to five passengers, appropriate sizing since 80 percent of all automobile trips have two or fewer individuals in the car. Moreover, such advanced technologies as adiabatic diesel engines and flywheel storage systems promise to offer high fuel economies for even larger vehicles.

E. Cost

The "bottom line" on fuel economy, of course, is the cost of the vehicle. New fuel efficient technologies do usually cost more. But since these generally carry other benefits, manufacturers and consumers alike are often willing to pay the higher price. Moreover the higher costs of these technologies can often be offset by streamlining and therefore reducing the costs of the manufacturing and assembly process. The Volvo LCP was designed in this manner; as a result, its developers believe that at a breakeven production level of 20,000 units per year, the vehicle can be produced at the same cost as today's average subcompact.

Conclusion

The issue of fuel economy policy must be broadened beyond the current debate of 27.5 versus 26 mpg for 1986. In the years ahead, domestic manufacturers face a "double whammy" of increased competition through the end of the decade and sharply increased oil imports in the 1990s. The strategies they are now pursuing will not enable them to meet either of these challenges very well. Indeed, one can foresee a scenario in which manufacturers respond to competitive pressures by sticking with the larger cars they are best at producing and conceding the smaller car market to their competition. Then, as the tightened oil market of the 1990s reawakens consumer demand for high fuel economy, the domestic industry will have little to offer, thereby losing more market shares--and jobs--to its competition.

Adopting a policy of deliberately increasing fuel economy will help the industry cope with these challenges. By doing so, the industry will be pushed to develop new technologies more quickly, enabling it to compete more successfully. Furthermore, the industry will be prepared to meet the consumer demand for high fuel economy when it reappears by the mid 1990s, if not sooner. The proposals in H.R. 1024 are a good first step in establishing a sound fuel economy policy for the next ten years.

Table 1

ADVANCED FUEL ECONOMY INNOVATION CURRENTLY BEING UNDERTAKEN BY AUTOMOTIVE COMPANIES

TECHNOLOGY	INNOVATION	REGIONS INVOLVED IN DEVELOPMENT	COMPANIES INVOLVED IN DEVELOPMENT	DEVELOPMENT STATUS
Engines	Direct Injection Diesels	Japan	Isuzu	2.5 liter engine in production, 1.5 liter engine being tested.
		Europe	Volkswagon, Peugeot, Fiat, Volvo, Renault	In pre-production prototype cars.
		U.S.	Ford	Research vehicle testing
	Ceramic Diesels	Japan	Isuzu	Ceramic hot plug & glow plug in production cars.
			Toyota	Ceramic hot plug in production cars.
		Europe	Opel	Prototype under development.
		U.S.	Ford	Research.
	Ultra-Lean-Burn Engines	Japan	Toyota	Pre-production prototype engine.
			Honda, Mitsubishi, Mazda	Research.
		U.S.	Ford	Research
	Variable Displacement Engines	Japan	Mitsubishi	Orion engine in production.
			Toyota	Installed in prototype FX-1.
		Europe	Porsche	Research vehicle testing.
Transmissions	Advanced Discrete Gear Transmissions	Japan	Isuzu	NAVI5 5 speed automatic in production.
			Honda	Hypershift semi-automatic in production.
		Europe	Renault	Prototype 5-speed automatic.
	Continuously Variable Transmissions (CVT's)	Japan	Subaru	Introduction in production Justy planned for Spring'86.
		Europe	Ford, Fiat	Installed in prototype Ford Fiesta & Fiat Uno, production decisions pending
		U.S.	Ford, G.M.	Research.
Advanced Aerodynamics (C_D below .30)		Japan	Subaru	Production car has C_D of .29.
		Europe	Renault	Production car has C_D of .28, lowest worldwide. Prototype car has C_D of .22.
			Peugeot	Prototype car has C_D of .18.

ADVANCED FUEL ECONOMY INNOVATION CURRENTLY
BEING UNDERTAKEN BY AUTOMOTIVE COMPANIES
CONT'D

TECHNOLOGY	INNOVATION	REGIONS INVOLVED IN DEVELOPMENT	COMPANIES INVOLVED IN DEVELOPMENT	DEVELOPMENT STATUS
Advanced Aerodynamics (C_D below .30)		Europe	Volkswagen	Prototype car has C_D of .25.
			Volvo	Prototype car has C_D between .25 and .28.
			British Leyland	Prototype car has C_D of .25.
		U.S.	Ford	Probe V has lowest prototype C_D .137, no production plans for low C_D.
			G.M.	Prototype car has C_D of .18.
Advanced Materials Substitution	Plastics Substitution	Japan	Honda	Production CRX has thermoplastic body-panels on 40% of panel area.
			G.M.	Production Fiero has skin entirely of plastic.
	Magnesium Substitution	Europe	Volvo	Prototype LCP 2000 has magnesium wheels, chassis and engine block.
Accessories	More Efficient Air Conditioning	U.S.	G.M.	Variable displacement air conditioning in production.
		Japan	Nissan	Thermal ray reflecting glass in production that lowers a.c. load 12%.
			Toyota	Electronically controlled air conditioner under development.
Energy Storage	Flywheel Stop-Start Systems	Japan	Nissan	In pre-production stage.
		Europe	Volkswagen	Production ready, awaiting decision.
	Flywheel Storage Systems	Japan	Toyota	Research.

Table 2--HIGH FUEL ECONOMY LIGHT VEHICLES

Company	Model	No. of Passengers	Weight (lb)	Max Power (hp)	Fuel Economy (mpg)*	Innovative Features	Development Status
GM	TPC (gasoline)	2	1040	30	68 city/95 hwy	Aluminum body and engine.	Prototype complete, no production plans.
British Leyland	ECV-3 (gasoline)	4-5	1460	72	46 city/67 hwy	Plastic panels	Prototype complete.
Volkswagen	Auto 2000 (diesel)	4-5	1716	53	63 city/71 hwy	DI diesel with plastics and aluminum substitution, flywheel stop/start.	Prototype complete.
	VW-E80 (diesel)	4	1540	29,38**	74 city/99 hwy	Modified 3-cyl DI diesel Polo with flywheel stop/start.	Subject of ongoing research, possible future commercial application.
Volvo	LCP 2000 (diesel)	2-4	1555	39,66	63 city/81 hwy	Extensive magnesium use, 2 DI diesels developed, one heat insulated.	Prototype complete, adaptable to production.
Renault	FVE+ (diesel)	4-5	1880	50	63 city/81 hwy	Supercharged DI diesel, engine stop/start, low C_D	Prototype complete.
	VESTA (gasoline)	2-4	1124	32	104city/124hwy	Light material Substitution, low C_D.	Development on-going.
Peugeot	VERA 2 (diesel)	4-5	1740	62	51 city/67 hwy	Light materials substitution, low C_D.	Prototype complete, DI diesel VERA+ under development.
	ECO 2000 (gasoline)	4	990	28	78 city/99 hwy	2-cyl gasoline engine, light materials substitution, very low C_D.	Development on-going.
Honda	CRX	2	1713	60	51 city/67 hwy	Plastic body panels, lean burn engine.	Production vehicle.

* Normalized to U.S. EPA test

** With supercharger

Mr. **Markey**. Mr. Crandall, the point that you made with regard to the cause of the problem that we faced back in the mid-1970's—that with the artificial constraints placed by the Government upon the price of energy, artificially constructed the response that auto manufacturers would have and consumers would have to that readily available supply of cheap energy, and with the removal of the price constraints, there was a result a market response, both to the price of oil and, as a consequence, to the types of automobiles that people began to purchase.

What I am interested in is your response to the stabilization, in fact the reduction in the cost of energy which is now taking place in the country, and the statistics or analyses which are seen in many places that indicate that for many consumers, given the increase in the technological capacity of automotive technology in the past 10 years, and the reduction recently in the cost of energy, that per mile a consumer might now be able to drive more cheaply than they could back 10 years ago, or as cheaply, as inexpensively and, as a result, the incentive for purchase of more fuel-efficient automobiles consistent with the security interests of the country that we are trying to advance, is no longer present.

Mr. **Crandall**. Well, there are a lot of aspects to your question. First of all, if there is a long term security interest—and there may well be—then one has to look carefully at our oil reserves, and perhaps taxes on oil to avoid excessive consumption. I'm not sure, and I'm not an expert on what the——

Mr. **Markey**. Yesterday this committee voted to curtail any further additions to the strategic petroleum reserve, and also the prospects of any tax bill going through Congress this year or next that include a substantial tax upon energy is very slight.

Mr. **Crandall**. I quite understand, but it may be the wrong time. The Government apparently buys when the price is high and curtails purchases when the price is low. This may be the time to buy, particularly given the problems for our neighbors to the south.

But I worry about interventions based upon perceptions of future prices. But, nonetheless, let me just point out that it is not clear to me that one has to force technology by artificially placing some fuel economy constraint on the automobile companies.

Most of the automobile companies that were referenced in Japan were developing this fuel-efficient technology, have in the last 12 to 36 months announced plans to build assembly plants here. They will be bringing that technology here. And if the domestic big three companies do not offer an attractive technology to American consumers, then Americans will work for Japanese companies located in the United States who do offer them.

I am not terribly concered about that. What I am concerned about is artificial constraints placed upon the marketing of cars. I now own an underpowered four-cylinder car, a large car which doesn't need a lot of gas, but it runs through a lot of engines, and it is not clear that that is an efficient way for the economy to operate.

Mr. **Markey**. So what do we do then? How do we reverse this once again developing trend of increased fuel consumption nationwide, mirroring the increase that began after a brief decline in 1976 and 1979. We went down, and now we're going right back up again, but without the teeth being put into the laws that can make it possible for us to——

Mr. **Crandall**. There are a lot of things you can do. If you rule out a tax, it becomes more difficult.

Mr. **Markey**. Let's work in the world that we live in, not in some ideal world. Let us assume that the Congress is not going to pass an energy tax. We might be able to get 30 votes, and the chairman of this committee and myself and a few others might be among those who would seriously entertain it, but I would doubt that we could get General Motors and Ford to endorse that proposal, and I think that those, amongst others, have worked very vigorously to prevent any energy tax from going into effect. And it is just a question of whether or not we abandon the laws which we have on the books, which have made some contributions and have a political constituency for laws which might not come to pass. Now, albeit, they are imperfect laws, but ought they be removed, and leave nothing in place that serves as some kind of buffer against the future, almost inevitable occurrence of the same kind of problems we had in 1974 and 1979?

Mr. **Crandall**. I don't know they are inevitable. There are things that can be done, including perhaps to induce greater efficiency in our electrical utility sector and allow them to consume more coal and less liquid fossil fuels. This is certainly something that could be done, although it is outside the jurisdiction of this committee, perhaps, this subcommittee.

But there are many things which could be done. However, I am not sure that there is a necessity for some immediate return to conservation at a time when the world seems terribly concerned that crude oil prices are going to drop even further, placing some LDC countries such as Venezuela and Mexico in dire straits.

Ms. **Bleviss**. Mr. Chairman, may I make a comment on a couple of things?

First of all, when we talk about what we can do about future demand, our options are much more limited than I think Mr. Crandall is presenting.

Sixty percent of our oil use is in the transportation sector. That automatically reduces how much the electric sector could possibly contribute to control of future oil consumption. That's No. 1.

No. 2, as far as a fuel tax, one of the problems with a fuel tax is that it works best in getting to about the 30-miles-per-gallon level. Once you go beyond that, you've got a car that's already sipping, and the consumer doesn't see that much greater effect in going from 30 to 40.

So you do have a problem of diminishing returns for any sort of reasonble fuel tax and, in fact, that is one of the reasons why we have seen that European fuel economy has stabilized for the last few years around 30 miles per gallon and has not gone much further, even though their taxes render prices of their gasoline about twice that of ours. And I think those are two important things to consider when we talk about future policy.

The other comment I wanted to make is that considering the 5-year lead time still required by the industry, you have to do some sort of anticipating in terms of policies. You can't look today at diminishing oil prices and project that 5 years and say that therefore we do not need anything because we are looking 5 years into the future.

Mr. **Markey**. Mr. Crandall?

Mr. **Crandall**. Well, I agree that you have to look out past the next 5 years, but I think you do so at great peril, if you try to outguess the market. We could have in 1973, 1974 have had all sorts of restraints upon the use of aluminum and copper on the grounds that their prices had soared in the late 1960's, early 1970's. There is now a glut of all those commodities, the prices are extremely low.

Second, as to the point of getting over 30 miles per gallon, I don't see any particular magic to any miles-per-gallon number. The fact is as you get to a higher and higher level miles-per-gallon level, you are quite right, the incentive for going any further becomes much, much smaller as the annual gasoline cost for driving any car becomes quite small.

But the objective here ought to be efficient use of energy resources, not simply enforcing some ideal miles-per-gallon level.

Mr. **Markey**. Mr. Ditlow, your organization is identified as a champion for consumers of the country. Mr. Crandall is arguing that the CAFE standards distort the marketplace and, as a result, hurt the consumer in the long run. How would you argue that the CAFE standards have in fact benefited the consumers?

Mr. **Ditlow**. First and foremost, under the CAFE standards, the increased cost of the car would be more than offset by the lower operating cost. Consumers certainly benefit from that.

Second of all, the consumers are primarily concerned about the utilitarian size of the vehicle, the cargo-carrying capecity, and many of the things that we are discussing today are choices between better technologies of tomorrow—actually, in some instances, ones that Chrysler has on the road, versus outmoded technologies which are simply generating more profits to the manufacturers.

So consumer choice is not really an issue, because the choice is not between big cars and little cars. The choice is between fuel-efficient big cars and gas-guzzling big cars, and consumers will benefit by increased fuel economy standards. There is just no question about that.

The problem from the consumer viewpoint is that as you get up to the 30-mile-per-gallon level, as Ms. Bleviss indicated, the immediate return to the consumer is less. But when we see 15 million vehicles being sold in this country in 1986, as projected by GM, and increased levels of miles traveled because of the increased vehicle population, we see more gas consumption so that consumers benefit from the improved fuel economy in another way. We had gas lines because there was a fuel shortage. It doesn't matter whether your car gets 30 miles per gallon or 20 miles per gallon if you can't buy gasoline. And the way that you head off gasoline shortages in the future is by energy conservation today.

Mr. **Markey**. Mr. Crandall?

Mr. **Crandall**. Let me respond to that. There are several ways in which you could improve fuel economy, and by far the the most important is not simply changes in technology. It's changes in design and changes in performance and, in fact, a very large percentage of the fuel savings we have seen have come from lighter, smaller cars with lower performance. That is true not only in terms of acceleration and the risk you run accelerating onto a freeway, but also in terms of the reliability of the cars.

Had I been in your position, with the Ford and General Motors witnesses up here, I would ask them how they are doing with their front wheel drive cars, whether they find them as reliable as the rear wheel drive cars. Consumers have some reason perhaps to prefer rear wheel drive cars. You may know the problems of the X-body, the A-body, and the Tempo, Topaz, so there are many other dimensions on the value of the car other than just its fuel consumption, which is a very small percentage of its cost.

In addition, I would suggest the reason why we have this problem today is people are not as willing to buy fuel efficient cars as they were before because of the price of gasoline. It seems to me that is absolutely clear.

Finally, if newspaper accounts are correct, Mr. Ditlow drives an even older car than I do, suggesting that he hasn't judged that the price of the additional fuel economy you get from a newer car is worth it.

Mr. **Ditlow**. The car that I drive is a five-speed without air-conditioning, a car that got over 30 miles per gallon back when I got it. And the reason why I can't replace it is because I'd like to get an air bag in a car and no domestic manufacturer sells it.

I would like to point out one other thing Mr. Crandall had just mentioned. You can pick out a lemon in any car. You need to look at some of the front wheel drive cars the Japanese produce which seem to be a little bit more immune to defects in the drive lines than the Tempos and the Topazes and the Escorts.

Mr. **Markey**. Mr. Ditlow, will Ford and GM fail to reach the finish line in the race toward the 27.5 miles per gallon? What is your opinion?

Mr. **Ditlow**. In 1986, the way they are headed, they won't meet it. But they should go ahead, pay the penalty and they'll make even higher profit in selling larger cars. The real risk for Ford and GM is they carry through with their threats if you keep the 27.5 standard and they are sued by shareholders because they stopped production of big cars. That's where the real shareholder derivative action lies.

Mr. **Markey**. What do you see as their having to lay off employees and shut down production lines?

Mr. **Ditlow**. They won't have to do that.

Mr. **Markey**. In your opinion, will they?

Mr. **Ditlow**. No. It's a bluff. If it's not a bluff, then why aren't they in here asking for one simple legislative amendment to take out the sentence that it is unlawful conduct in the act? Save everything else. Has either GM or Ford proposed that? Because that would take care of all their problems.

Mr. **Markey**. Do you agree with that, Ms. Bleviss?

Ms. **Bleviss**. I agree.

Mr. **Markey**. Mr. Crandall?

Mr. **Crandall**. I haven't looked close enough at their facilities. They clearly would have to change their mix. They may do it by pricing, by raising the prices on large cars and cutting them on small cars over the next year or two.

Now how quickly they can adjust that mix and—I don't know, chances are there would be some layoffs at those facilities that are tooled up to produce the big cars.

Mr. **Markey**. But is it also possible that they might decide that a fine is the more acceptable means of complying?

Mr. **Crandall**. They will do a little of both. They will optimize, I suspect, by paying some fines and trying to shift some to small cars.

Mr. **Markey**. So you are saying the truth lies between the two?

Mr. **Crandall**. Yes. I don't know how much in the way of facility closings they would suffer.

Mr. **Markey**. Mr. Ledbetter, there is much debate on how the auto industry moved its fuel economy from 14 miles per gallon in the mid-1970's to 20 miles per gallon in recent years. The debate centers on the role the marketplace played. Earlier Ms. Steed said that the marketplace would force conservation.

Can you comment on any studies showing the role that CAFE has played in pushing the overall fuel economies much higher?

Mr. **Ledbetter**. Yes. I am aware of an analysis that was done in the Department of Energy. It was never released as an official publication, it was an internal memorandum.

Nevertheless, that analysis of the improvement in automobile fuel economy up till 1984, I believe, showed that 82 percent of the improvement that has occurred since 1977 was due to regulatory requirements, including CAFE and the gas-guzzler tax. The remaining 18 percent was due to response to the price of fuel.

I am aware of one other analysis that was done on the topic that was done by K.G. Duleep of Energy & Environmental Analysis, Inc. And he has concluded that it is clear, based on the timing of the release of new fuel-efficient vehicles, that the CAFE standards play an essential role in forcing manufacturers to produce fuel-efficient improvements earlier than they otherwise would have, if they had relied totally on the market.

Mr. **Markey**. Mr. Crandall, that runs totally contrary to what you said.

Mr. **Crandall**. It is difficult to tell the relative contribution. It is difficult to know what expectations of future gasoline prices were. I would submit to you that in the late 1970's when Chrysler jettisoned its large cars, it did so because it accepted the view that gasoline prices were going to continue to rise very rapidly after the Iranian crisis. And as a result they concentrated on smaller cars.

In fact, the amount of savings one got in fuel consumption between the early 1970's and 1981 is just about what you should have expected, given the cost of getting there from the higher price of gasoline.

Since that time, there is no doubt but what CAFE has been binding and has undoubtedly affected the average fuel economy.

Mr. **Markey**. In what way has it affected it in the range of adjectives that you can select which would apply to CAFE's contribution to the improvement?

Mr. **Crandall**. Since we are only 4 years after the inflection point in energy prices that occurred in 1981, clearly that change of prices could not have had much effect upon the design of cars in use today. So the way in which it has affected CAFE and the average miles per gallon is by changing relative prices. It has increased the price of large cars relative to small cars.

Mr. MARKEY. But what about CAFE?

Mr. CRANDALL. Yes.

Mr. MARKEY. I know it has had that effect, but has it also had the effect of spurring the increase in fuel efficiency?

Mr. CRANDALL. Well, the increase in fuel efficiency in terms of harmonic weighted average of the fleet, yes, because of the induced shift caused by higher big car prices relative to small car prices.

I don't think it is possible to say anything about what it has done to technology. The lead times are too long. I'm saying that between the early 1970's and 1981, I can tell the story that the improvement we got was entirely consistent with the rise in gas prices. Since that time——

Mr. MARKEY. Entirely?

Mr. CRANDALL. Yes. That in fact we would have expected, had the companies known with precision what the price of gasoline was going to be in 1981, that that's where they'd be.

Now that is a very strong assumption, because the gasoline prices behaved very erratically, as you know, from 1973 to 1981.

Mr. MARKEY. So you reject essentially——

Mr. CRANDALL. The numbers 82 and 18, I think we are really flipping coins. I think that's far too high, but it's very difficult to know what was driving decisionmakers who have to make decisions 4 to 5 years in advance in introducing a car.

I am saying that the actual outcome was consistent with the rise in gasoline prices.

Mr. MARKEY. They didn't know the price of gasoline, but they did know there was a Federal law on the books, and they did know that for certain. Obviously, one of the things they couldn't predict was who was going to win the Presidency in 1984 and whether the Senate was going to be in Democratic or Republican hands, and they were really rolling the dice if they did not in fact comply. And I'm not saying that General Motors and Ford went all out on it, but I also can say that there is some sense I get that they didn't want to run the risk of coming out 24 miles or 23 miles per gallon for the fleet average, which was something that they might have done if they didn't feel there was some sword of Damocles hanging over their head.

Mr. CRANDALL. In the period 1975 to 1978, that is probably true. Their expectations of future gas prices were undoubtedly going down. I would be very surprised if anyone in a decisionmaking capacity in one of the companies in early 1979 to 1980 would have predicted gasoline prices anywhere near as low as they are today. And I think they probably were, as Chrysler was during its bankruptcy, very motivated to produce small cars because they thought that's where the market was going.

Mr. MARKEY. By the same token, they would be ill-advised to predict the price of gasoline in 1990.

Mr. CRANDALL. They have to make a stab at it, don't they?

Mr. MARKEY. They do have to make a stab at it, but unfortunately there are serious consequences if they are wrong.

Ms. Bleviss, can you comment on this subject, on the area we are discussing?

Ms. Bleviss. Well, I think that one of the illustrations of how difficult it is for the companies to predict what will happen in 1990 is to look at their future product lines.

First of all, the product lines haven't been firmed up for anything beyond 1990. I think that is in itself a point of concern. They really don't know what the market is going to be. And, in fact, Automotive News recently talked about product line decisions falling into a black hole after 1990. I think that's true, the companies don't know where they are going, and so, gripped by a sense of uncertainty, they are trying to plan for every single type of occurrence that could possibly happen. That is very expensive.

Mr. Markey. I would like to finish up the hearing in this way, and that is each of you perhaps take 2 minutes, not more than 2 minutes, and give us your summary statements as to what you think this committee ought to keep in mind as we examine this issue. Why don't we start with Ms. Bleviss and wind up with Mr. Crandall, since he is in the minority on many of the views, and you can get the final whack at it.

Why don't we start with you.

Ms. Bleviss. I think the major thing I would hope this committee does is not lose sight of the fact that we should be talking about post-1985 fuel economy policy, at the same time that we are worried about fuel economy policy in 1986.

So while we should continue to weigh in and hopefully have some influence on a decision about the proposed rollback, in fact a major, if not the more important issue at hand, is deciding what exactly this country is going to do, if anything, to decide fuel economy policy for the next 10 years.

Mr. Markey. Mr. Ditlow.

Mr. Ditlow. In the short term, because of DOT proceedings, the role of this committee is to make sure that we have a public proceeding, and let's eliminate the manipulations that are going on in the data behind the shield of confidentiality. Otherwise how we can have any trust in what DOT's decisions are. For the longer term if we have public decisionmaking, the courts can take care of what the act means; and we fully intend to do that.

And for the longer run, the important role of this committee is to reset an energy conservation program for the Nation for fuel economy standards and get us back on track towards fuel economies, for 40 miles per gallon in the 1990's.

Mr. Markey. Mr. Ledbetter?

Mr. Ledbetter. I think I echo the comments of my two other colleagues here. Our major problem lies ahead of us. It is not now, although the move from a 27.5-mile-per-gallon standard to 26 miles per gallon is definitely a bad precedent. The rationale being used to justify it, I think, is a misinterpretation of the law and an abuse of the law.

I think, nevertheless, that the major problem lies ahead of us. We are looking at the increasing likelihood that we are moving to a tight world market in the 1990's, and our Nation has been through the ramifications of that once.

I would think that they would do everything possible to prevent the occurrence of that type of event again, and since automobile fuel economy improvements take years and years to show significant savings in our vehicle fleet, it is time we begin planning now, and I would urge this committee to look at the long range plans.

Mr. **Markey**. Mr. Crandall?

Mr. **Crandall**. Well, obviously I disagree with the three other members of this panel, and I hope they are buying crude oil futures for their private portfolios at the present time. I think there is a matter for concern in this committee as far as providing against future emergencies in terms of restrictions of supply of crude oil because of the geopolitical distribution of oil.

I think that fuel economy standards are just a dreadful way to do that, and that some taxes to restrict consumption or a decision to add to the strategic petroleum reserve has to be a better option.

I also warn you that the U.S. automobile companies are in a very bad competitive position right now, particularly in the smaller cars, and if currency rates stay anywhere near where they are today, we have to be concerned about their long-term health. Far from providing certainty CAFE or any other regulatory mechanism increases the uncertainty, because this is not the last hearing on this subject, either here or at the Department of Transportation.

So I think we ought to reduce the uncertainty on the automobile industry wherever it is possible, and where it is socially beneficial, and I think this is one of the cases where it is.

Mr. **Markey**. Thank you very much. We thank the panel. I will just say in conclusion, would that we lived in a world that had an administration or even a Congress that was interested in imposing the kinds of taxes or filling a strategic petroleum reserve or even retaining some sense of commitment to the standards that are included in the piece of legislation which we passed in 1975 with regard to fuel economy standards.

Unfortunately, we don't have an administration which is committed to any of those options. We live to a certain extent right now in this country in a fool's paradise. We are going to try to predict the weather 2 or 3 or 4 or 5 years from now by looking out the window today and determining that because it's sunny now, it will probably be sunny then as well.

I think that is a very foolhardy way of dealing with an issue which has such tremendous security and economic consequences for our country if we guess wrong and if the market forces at the time guess wrong. And I would suggest that although there ought to be more of a strong willed commitment to deal with this issue in other ways, perhaps as you have suggested, Mr. Crandall, it does not exist, and this administration of all administrations is not in fact conducive to supporting those kinds of proposals. If it were possible to transfer laser technologies of the strategic defense initiative into fuel economy, I think we would have a good chance of making breakthroughs in the latter part of this decade.

That not being the case, I'm afraid we are stuck with what we've got. And as I think most of us would have to admit, the perfect is the enemy of better, and this is all we have. It's better than nothing. It ain't perfect. But I would prefer to try to make this work than scrap everything and just bemoan the fact that the world isn't more ideal. It's not. And I think that this committee should continue to monitor this area because without question, without careful attention to it, we will have lost our greatest opportunity for fuel conservation, which is what CAFE standards offer to the American economy and the American consumer.

With that, this hearing is adjourned.

[Whereupon, at 2 p.m., the hearing was adjourned.]

[The following material was submitted:]

Statement of
Dr. Elihu Bergman
Executive Director

AMERICANS FOR ENERGY INDEPENDENCE
Washington, DC

Mr. Chairman and Members of the Committee:

We appreciate the opportunity to present our views on proposals to modify the corporate average fuel economy (CAFE) standards. Americans For Energy Independence (AFEI) is an independent policy organization concerned with the achievement of a secure national energy system based on today's resource and market realities.

The continued reduction of oil usage remains the critical ingredient in national energy security. Because nearly 60% of U.S. oil consumption is used to make gasoline for automobiles, the fuel economy of automobiles is the key factor in our ability to reduce oil demand. In fact, the improvement in automotive fuel economy is the most powerful instrument available to us for making additional significant reductions in oil consumption.

Under the circumstances, any backsliding on fuel efficiency standards subverts our national commitment to energy security. It is bad policy; it is bad judgement; it is bad economics.

With storm clouds on the horizon that suggest an increase in the need for U.S. imports in the 90's, this is no time to forfeit an effective government policy that reduces oil consumption. Given the disturbing signs, now is the time to put in place measures that will protect us in the 90's. Fuel efficiency standards is one of them.

Recent disclosures of sharply declining U.S. oil production in the 1990's should inject new anxiety in the prevailing complacency about the national energy condition. Two authoritative U.S. government sources estimate that by the end of the century domestic production will be cut in half.

The most recent projection came from the Interior Department's Geological Survey, which forecasts a production drop of more than 50%. Alaska alone, which has been viewed as the last major U.S. oil frontier, becomes an oil disappointment in Interior's new projections, with a decline of more than 70%. The new North Slopes in Alaska have not been found, and prospects for them are fading.

Several months before Interior released its bad news, the Congressional Research Service, another highly respected source of oil forecasting, projected that domestic production would decline by as much as 30% below current levels by the year 2000. Other government, industry, and think tank sources agree with CRS and Interior, if not on exact levels, at least on general trends and magnitudes.

A 50% decline in domestic oil production at current rates translates into 4.4 million barrels a day (MBD). Even if current rates of U.S. oil consumption do not increase in the 90's, an unlikely prospect, we would have to replace nearly all this lost domestic production with imports. This requirement for more foreign oil would double U.S. imports and restore them to the 1979 peak. The source of these imports would be the OPEC producing countries on the Persian Gulf, where 50% of the world's proven oil reserves are located. This additional U.S. requirement for OPEC oil, coupled to increasing oil demand elsewhere in the world, would be a major factor in restoring the pricing and production power that OPEC has temporarily lost. We have been there before; we know what it would mean for U.S. economy

This disturbing, but highly probable, version of our energy future underlines the value of increasing, rather than subverting, fuel efficiency standards. As an instrument for achieving significant reductions in U.S. oil consumption in the next 15 years, there is no substitute for automobile fuel efficiency standards. Just consider the numbers: At current rates of consumption, 55% of the oil that goes into U.S. refineries is required to make gasoline. This need translates into about 7 million barrels of crude oil. If U.S. gasoline requirements were cut in half, we would eliminate the need for about 3.5 MBD of crude oil. This reduction in U.S. oil consumption would nearly eliminate the impending increase in imports that we face in the 90's.

Clearly the stakes are high for maintaining and increasing the fuel performance of the American automobile fleet. But the goal is within reach. By 1983, the average performance of automobiles was 16.7 miles per gallon, up from 13.1 in 1973, for a 27.5% improvement during the 10-year interval. The improvement in performance during the last 5 years of the interval -- 1978-83 -- was double the rate of the first 5 years. Obviously a lot can happen in 5 years with the provision of incentive and the creation of momentum.

Current CAFE requirements are set at 27.5 MPG for the 1986 model year. With replacement of the existing fleet of gasguzzlers, it is likely that the manufacturing target will translate into actual performance at a faster pace in the next 5 years. With the provision of additional incentive to maintain and increase the momentum, we could look forward to even better results with greater benefits to the nation. A 27% increase in the fuel efficiency target for the next 10 years -- the exact amount by which efficiency actually improved during the past 10 years -- would provide the incentive. The new goal, and requirement for automobile production, should be 35 MPG by 1995. Doubling today's actual automobile performance of 17.5 to 35 MPG would enable us to nearly cut in half the amount of oil required for gasoline production.

A 35 MPG target is not unrealistic; it is achievable in the 90's. Many cars on the road today, including some mid-sized models, are approaching it. And some of the state-of-the-art projects for the late 80's, notably GM's "Saturn" program, are talking about 60 miles per gallon.

But we cannot rely on the automobile manufacturers alone, operating in a pure marketplace environment, to persist in this effort. The marketplace is fickle, and the manufacturers are in business to maximize profits.

As an example, Ford and GM claim that declining gasoline prices have created increased demand for larger cars and that the demand must be met to protect the free market economy. What they fail to mention is the obvious: Larger car sales turn higher profits than small car sales. But profitability in the automobile industry can be consistent with greater fuel economy Although Chrysler's profits have been lower than Ford's and GM's, due to a concentration on fuel efficient car sales, Chrysler was nonetheless able to turn a healthy profit in 1984 while meeting the CAFE standards.

Until we have the national interest in energy secured, which means eliminating our vulnerability to market manipulations of foreign oil producers, the government must stay involved. The Administration should not forfeit the responsibility for continued involvement and leadership because of some romantic notions about the marketplace. The stakes are simply too high to treat energy preparedness with an ideological bias that the Administration misguidedly prefers. Backsliding on fuel efficiency standards, as Ford and GM seek and the Administration supports, exposes the country to an unnecessary, and even intolerable risk.

We know from the experience of the early 80's how oil dependence and the resulting price shocks savage the economy. The second oil price shock in 1980, which doubled oil prices within the year, drained $1 trillion in growth out of the economies of the Western industrial nations and triggered the round of inflation, unemployment, high interest rates, and other pathologies of recession in which the United States shared. In light of this experience, the Department of Commerce, speaking for the Administration, is especially myopic in claiming that a relaxation of fuel efficiency standards will create employment.

Ironically, as the Department of Commerce should well understand, if we set ourselves up for another oil crisis, the automobile industry in this country and its hundreds of thousands of workers stand to lose at least as much as any other sector of our economy; an upward surge in oil prices and shortage of supplies will mean another American run on foreign cars, whose manufacturers have clearly demonstrated a superior grasp of the long-term oil situation and its implications for the automobile market. Surely the American people, who will suffer enough in the event of another oil crunch, should not be expected to pay for the inexcusable lack of foresight on the part of our own automobile manufacturers with another round of bail-outs and quotas on foreign car imports.

It could all happen again, if we let it happen. Whatever our present good fortune, oil remains the Achilles' heel of our energy system, and thus of our economic system. The projections for the 90's portray an opportunity for OPEC to once more seize control of the oil market and trigger another price spiral. Our agenda for today must be to set in place the deterrents that will continue to reduce oil consumption, and simultaneously our vulnerability, while contributing to the prevention of another economic victimization. The maintenance and increase of mandatory fuel efficiency standards is a vital ingredient in the protective mix.

Thank you, Mr. Chairman, for the opportunity to present our views.

September 6, 1985

The Honorable Edward J. Markey, Chairman
Subcommittee on Energy Conservation and Power
The United States House of Representatives
Washington, D.C. 20515

Dear Mister Markey:

I am appalled at the National Highway Traffic Safety Administration decision to reduce the Corporate Average Fuel Economy standards from 27.5 miles per gallon to 26.0 mpg. Chrysler Corporation has already demonstrated the technical feasibility of the 27.5-mpg standard. For NHTSA to imply that the same technology is not available to GM and Ford with their significantly greater resources is ludicrous.

The decision with respect to GM is particularly galling, because GM has refused to discontinue older models upon the introduction of newer, more fuel efficient versions for the same market niches.

Since 1982, GM has continued to sell the Oldsmobile Cutlass and the Pontiac Bonneville alongside the new successor models, Oldsmobile Cutlass Ciera and Pontiac 6000. They did the same thing in the 1985 model year. Cadillac Fleetwood Brougham, Pontiac Gran Prix, Oldsmobile Cutlass Supreme coupe, and Buick Regal have been sold concurrently with the new Cadillac Fleetwood, Pontiac Grand Am, Oldsmobile Calais, and Buick Somerset Regal. The similarity in names confirms the intended succession of the new models in place of the old.

Ford has not reduced the size and weight of their large Ford Crown Victoria and Mercury Grand Marquis models since 1979. No change is planned in these behemoths until the 1991 model year. Likewise, the gigantic Lincoln Town Car has been unchanged since 1981 and will remain so until 1992.

The Ford and GM decisions not to alter their mix of cars was just as deliberate as Chrysler's decision to take the steps necessary to comply with the rule. Had GM and Ford felt that the continued sales of their old, inefficient large cars were desirable, they could have put voluntary restraints on production volumes and priced them accordingly. I'm certain that you are familiar with supply and demand pricing. It has been working very well for the Japanese auto companies the last few years.

It is all the more disturbing to see Ford and GM putting financial incentives on their inefficient models to encourage purchases at the same time that they have been seeking relief from the CAFE requirements.

To change the rules in mid-stream on the CAFE requirements is akin to, having once instituted a rule to reduce the average height of professional basketball players on each team, rescinding the rule after some teams protest about the difficulty of finding talented short-statured players even though other teams had "downsized" their teams to comply with the rule. That's not fair to those who played by the rules.

In NHTSA's attempt to avoid imposing financial hardships on Ford and GM, they have chosen instead to economically penalize the one who followed the rule, Chrysler. This is the American way?

I hope that the House Subcommittee on Energy Conservation and Power that you chair will insist on some straight answers during the upcoming hearings from industry and Administration representatives on this sad state of affairs. Justice demands such a thorough inquiry.

Sincerely,

John Fobian

John Fobian
5510 Kings Park Drive
Springfield, Virginia 22151

Statement of
Professor Robert A. Leone
on
Passenger Automobile Fuel Economy Standards
Prepared for the
Subcommittee on Energy Conservation and Power
Committee on Energy & Commerce
House of Representatives
19 September 1985
On behalf of
Automobile Importers of America

My name is Robert A. Leone. I am with the John F. Kennedy School of Government at Harvard University where I study the economic impact of public policy on American business. In addition, I am a principal of Putnam, Hayes & Bartlett, Inc., a major economic consulting firm in Cambridge, Massachusetts.

For the past 15 years I have followed regulatory requirements which affect the auto industry. In the early 1970s, I participated in the National Academy of Sciences study of the auto emissions control program. I subsequently examined the impact of regulatory policy on automobile technology for the Office of Technology Assessment. In 1981, I conducted a study of the competitive implications of auto import restrictions while serving with the President's Council of Economic Advisers. In 1982, I undertook a study of Corporate Average Fuel Economy (CAFE) standards for the Annual Review of Energy. In 1984, I published an evaluation of the impact of the Reagan Administration's auto industry policy for the Urban Institute.

Earlier this year, the Automobile Importers of America (AIA) asked me to analyze the effect of a reduction in the CAFE standards on the public, the economy, and on the nation's fuel-efficiency objectives. Those findings were made public in June.

I will discuss here the conclusions of my research. A copy of my study, "Corporate Average Fuel Economy Standards: A 1985 Perspective," is attached for the record.

Background

In 1975, Congress adopted Corporate Average Fuel Economy standards as one part of a national effort to deal with the energy crisis. These standards served three distinct purposes. First, they advanced fuel economy objectives without resorting to immediate gasoline price decontrol. Second, they encouraged energy-saving improvements in automotive technology. Third, mandatory CAFE standards confirmed this nation's commitment to energy conservation.

Today, gasoline prices are no longer controlled; automotive technology is dramatically improved; and energy conservation has become a matter of national routine. In other words, we have achieved our goals of conserving energy, reducing dependence on OPEC, and increasing fuel efficiency.

And we have done so with dramatic success. Since 1975 there has been an almost eight-fold increase in the number of new cars sold which exceed 25 mpg. At the same time, the number of cars achieving less than 20 mpg has dropped from about 75 percent of sales to a negligible few. By 1995, as older cars are replaced with new fuel-efficient vehicles, and without any additional technological advances, we can expect that 43 percent of the on-the-road fleet will achieve a fuel efficiency better than 27.5 mpg.

The Wise Course: A Balanced Program

Now, given this dramatic success, some people would have us "declare victory" and retreat from a national commitment to improving automotive fuel economy. Such a response would be short-sighted and unwise. Even in the face of our dramatic success, there is no doubt that the importance of saving energy is as great today as it has been at any time in the past decade.

Observing this same success, others would have us tighten our regulatory requirements further in the hope of repeating our past success. Such a response is similarly short-sighted and unwise. After all, regulation is a bit like medicine: the proper dose may save your life, but an overdose can be fatal.

The wise course is to first ask how we achieved our success to date and then apply these lessons to future policy.

As I see it, we have dramatically improved automotive fuel economy with a balanced program of consumer choice, competitive incentives, and fuel economy standards. Experience tells us that consumer choice and competitive incentives are the most potent means by which to improve fuel economy. Experience also tells us that CAFE standards are an important statement of the nation's commitment to energy conservation.

I conclude that the key to a successful program for increasing fuel efficiency is balance. Regulatory standards mean little if consumers will not buy high-mileage cars. Consumer preferences mean little if producers cannot sell vehicles at a reasonable profit. And producer interests mean little if the national interest is not served.

I emphasize the word "balance" because a program which places excessive reliance on regulatory requirements to achieve energy goals is imbalanced. An imbalanced program causes market distortions and undermines the nation's energy conservation objectives.

A 26.0 mpg Standard is More Fuel Efficient Than a 27.5 mpg Standard

A CAFE standard of 26.0 mpg is a balanced standard. It is superior to a standard of 27.5 mpg for one simple reason: it is likely to save the nation more energy than the seemingly more stringent alternative.

Now let's face it, when anyone tells you less is more, you ought to be skeptical, but you should not be surprised. When it comes to energy economics, things are often not as they first appear.

For example, we all know that electricity is an expensive source of energy, yet cost-conscious industrial users of energy are actually increasing their use of electricity as energy prices rise. Similarly, we all know that there are economies of scale in building large power plants, but we have recently discovered that smaller plants are often cheaper. In perhaps the most obvious case of counterintuitive energy economics, many people expected energy prices to rise after price controls were lifted in 1981, but prices fell instead.

In each of these cases some people were surprised -- but not those who paid close attention to balance. Electricity is not always expensive when its cost is balanced against the flexibility it provides. Larger power plants are not always cheaper when economies of scale are balanced against construction lead times. Controlled energy prices are not always lower than market-determined prices when the cost of regulation is balanced against the benefits of competition.

And a more stringent CAFE standard need not save energy when the distortions created by regulation are balanced against the market incentives facing both consumers and producers.

In today's energy market, a CAFE standard of 26.0 mpg is a balanced standard. It protects consumer choice. It allows competition on the basis of fuel economy without causing uneconomic diversion of sales from one producer to another. And it avoids wasteful, unfair, and counterproductive actions that dampen new car sales and cost jobs.

A standard of 27.5 mpg, in contrast, is not a balanced regulatory requirement. Such a standard is unfair and counterproductive. Like an overdose of good medicine, a standard of 27.5 mpg can harm the nation's health.

A standard of 27.5 mpg is unfair and counterproductive because it distorts the market. Our studies show that, under current circumstances, for domestic producers to raise the CAFE level by 0.5 mpg, at least 700,000 consumers will: 1) shift to a van or light truck, 2) shift to another producer's car, or 3) not replace an older, less efficient vehicle. Let me spell that out:

1. A standard of 27.5 mpg will cause sales to shift from passenger cars to light trucks and vans with lower CAFE requirements and poorer fuel economy. Because of the substitutability among light trucks, vans, and large passenger cars, any effort to discourage sales of passenger wagons and other large vehicles benefits producers of trucks and vans.

   Ironically, the CAFE standards for light trucks were first relaxed in response to Chrysler's petition, thereby increasing the possibility for distortion due to the diversion of passenger car sales to truck or van sales.

Excessively stringent CAFE standards for automobiles may even cause a replay of the 1970s when differential air emission standards for autos and light trucks helped triple the size of the light truck and van market.

2. A standard of 27.5 mpg will cause sales to shift from one competitor to another to the detriment of fuel economy in some cases. A multi-line producer like VW/Audi sells a wider range of cars than a single-line manufacturer like Saab, which targets its product to a particular market segment. Some of the Audi models which compete directly with Saab, however, actually achieve lower fuel efficiency than Saab. But because VW/Audi is a multi-line manufacturer, it can offset sales of these lower mpg cars with sales of higher mpg cars, and avoid penalties. In contrast, Saab, a single-line manufacturer, has no high mpg cars available in its mix. Therefore, to maintain its same after-tax profits, it would be necessary to raise the price of Saab automobiles by $200-$400. Thus, a customer who purchases a Saab 900 Turbo at 19.2 mpg could easily be penalized $200 to $400 while another customer who purchased an Audi 5000S Turbo at 18.9 mpg might pay no penalty at all, despite purchasing a car with lower gas mileage.

In this way single-line manufacturers are penalized for their limited product offerings even if, within the targeted market segment, their products achieve equal or better fuel efficiency than those offered by their multi-line competitors.

3. A standard of 27.5 mpg discourages new car sales to the detriment of both employment and fuel efficiency.

There is no doubt that the diversion of sales from new cars to used cars undermines fuel economy. Today, new cars average 27.4 mpg, while cars on-the-road average 17.5 mpg.

The average age of cars on the road has already increased dramatically since CAFE standards were put in place.

According to our calculations, if stringent CAFE standards caused only one percent of all automobile consumers to switch from a passenger car to a light truck, specialty vehicle, or van, any fuel efficiency benefit of a 27.5 over a 26.0 mpg standard would be negated. Alternatively, gasoline fuel economy for the fleet as a whole would actually fall because of the more stringent 27.5 mpg standard if one percent of all auto consumers, frustrated by the higher price of the car of choice, decided to keep an old 18 mpg car on the road.

Conclusions

To put in perspective the difference between a standard of 26.0 vs 27.5 mpg we should look at the consequences:

The higher standard will inhibit consumer choice for hundreds of thousands of consumers. It will cost millions of dollars in lost sales, thousands of lost jobs, and substantial lost profits for individual producers. We would like to believe that the more stringent standard will mean an improvement in fuel economy. And indeed, if there were no distortions created by regulation and everything worked perfectly, there would be an improvement in the 1995 United States automobile fleet -- all on-the-road cars -- of 7/10 of 1 mpg. But the world is not perfect. It is at least as likely that a standard of 27.5 mpg will reduce the nation's fuel economy for the next 10 years, due to market distortions and the long lives of vehicles.

In short, a 27.5 mpg standard is unquestionably more stringent on paper but not necessarily more stringent on the road. It is an imbalanced regulatory standard which will most likely produce a small increase in fuel use in the short run due to market distortions, cause consumer frustration, produce no discernible long-term gain in fuel economy, and cause major disruption to domestic automobile markets.

In contrast, a 26.0 mpg standard would create a more balanced program of consumer choice, competitive incentives, and regulatory requirements to advance this nation's fuel economy goals.

MERCEDES-BENZ OF NORTH AMERICA, INC.

September 20, 1985

The Honorable John D. Dingell
United States House of Representatives
Washington, D. C. 20515

Dear Congressman Dingell:

Your statement at the September 19, 1985 hearing before the Subcommittee on Energy, Conservation and Power on CAFE legislation regarding the absence of participation by Mercedes-Benz has been called to my attention.

Please be assured that we are deeply concerned about this matter and have made submissions to NHTSA expressing support of the Agency's proposal to amend the MY 1986 fuel economy standard to 26.0 mpg and stating further that, in our view, sufficient data is available to justify extending this rule to MY 1987 and 1988 models as well. We support the position you expressed at the hearing regarding pending legislation and commend you for your leadership in this area.

Attached is a copy of our comments on Docket FE-85 supporting a CAFE standard of 26.0 mpg which I would appreciate your making a part of the record of the hearings.

Sincerely,

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985 SEP 25 AM 10 01

Encl.

cc: Congressman Edward Markey
Chairman
Subcommittee on Energy, Conservation and Power

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WRITER'S DIRECT DIAL NUMBER:
331-4624

August 19, 1985

The National Highway Traffic
  Safety Administration
400 - 7th Street, S.W.
Room 5109 - Docket
Washington, D.C. 20590

Re: Comments Re Docket No. FE-85-01, Notice 2

Dear Sir:

On behalf of my client, Mercedes-Benz of North America, Inc., enclosed please find comments regarding the above-referenced docket.

Sincerely,

Jerome Sonosky
Jerome N. Sonosky

Enc.

COMMENTS OF
MERCEDES-BENZ OF NORTH AMERICA, INC.

PASSENGER AUTOMOBILE AVERAGE FUEL ECONOMY STANDARDS
MODEL YEAR 1986

DOCKET NO. FE-85-01; NOTICE 2
NHTSA, 400 SEVENTH ST., S.W., WASHINGTON, D.C. 20590

Pursuant to the Agency's Notice of Proposed Rulemaking of July 17, 1985, 49 CFR Part 531, Mercedes-Benz of North America, Inc. ("MBNA"), hereby submits on behalf of its parent company Daimler-Benz AG comments in support of the Agency's proposal to amend the MY 1986 fuel economy standard to 26.0 mpg.

As the Agency is aware, our projections show that we will not be able to meet even the proposed 26.0 mpg standard despite all of DBAG's activities and efforts.

(See attached submission of April 29, 1985 to Docket No. FE-85-01, Notice 1, which describes in detail the various factors impacting MBNA's CAFE capability.)

The Agency's decision to base its determination of the maximum feasible average fuel economy level on the least capable manufacturers with major shares of the market leaves every manufacturer who chooses to concentrate on a certain segment of the market with an offset either above or below such a "feasible" level.

The Agency also concludes that the language of the Conference Report to the 1975 Act indicates "that some manufacturers may find it necessary to pay penalties."

In the interest for a timely implementation of a more realistic corporate average fuel economy standard we generally agree with the Agency's conclusions and support the decision to amend the MY 1986 fuel economy standard to 26.0 mpg. We believe further that sufficient data is available to justify extending this rule to MY 1987 and 1988 models as well.

COMMENTS OF
MERCEDES BENZ OF NORTH AMERICA, INC.

Passenger Automobile Average Fuel Economy Standards
Post-1985 Model Years

Docket No. FE-85-01, Notice 1
April 29, 1985

Pursuant to the Agency's notification of March 28, 1985, 50 Fed. Reg. 12344 (March 28, 1985), Mercedes Benz of North America, Inc. ("MBNA"), hereby submits its comment in support of the General Motors and Ford Petitions for Rulemaking requesting that NHTSA reduce the automotive fuel economy standards for passenger cars for the 1986 model year 1/ and beyond from 27.5 mpg to 26.0 mpg.

I. MBNA Activities To Achieve CAFE Standards

MBNA, through its parent corporation Daimler-Benz AG, has taken all steps possible to achieve the CAFE standards. As

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1/ MBNA does not agree with the Agency's statement that it cannot reduce the standard for a particular model year after the beginning of the model year. The Agency's action would in no manner result in a penalty to any party. All manufacturers who have applied technology for the improvement of fuel economy have that technology in place at the present time. Accordingly, whether the Agency changes its standard prior to or subsequent to the beginning of the model year there is no penalty and, therefore, no basis for not taking such action. Indeed, by refusing to take action after the beginning of the model year, NHTSA is in fact penalizing manufacturers. However, since there is sufficient time between the closing of comment and the beginning of the model year this issue need not be addressed as long as the Agency takes action prior to the beginning of the model year.

the Agency is aware, Daimler-Benz, as a "limited line manufacturer" did not have available to it at the beginning of the CAFE rules smaller, more fuel efficient vehicles with high fuel economy so that its model mix could achieve the CAFE standards. However, as a leader in diesel engine technology, DBAG attempted to develop a model mix utilizing the highly fuel efficient diesel engine to improve fuel economy of its fleet. At the same time, development of a down-sized Mercedes-Benz was initiated.

From the beginning of the CAFE program, the number and variety of Mercedes-Benz diesel vehicles available in the United States was increased in an attempt to achieve the CAFE standards. At one point, 80 percent of U.S. sales were diesel vehicles and, if the market projections for diesel sales on which MBNA based its future product planning had actually occurred, compliance with the CAFE standards would have been possible.

However, three specific factors, two of which are the direct result of federal government action, have made it impossible for the Mercedes-Benz fleet to achieve the CAFE standards. These factors and the resulting economic impact are described more fully below. MBNA wishes to emphasize, however, that the discretion accorded the Secretary under the Act was provided for the purpose of eliminating a penalty upon manufacturers because of factors beyond their control. The issues listed below are such factors and MBNA believes merit modification of the fuel economy standard in model year 1986 and beyond to 26.0 mpg.

II. EPA Particulate Matter Regulations

Beginning in California in model year 1985 and throughout the United States in model year 1987, mandated particulate matter emission standards require the use of diesel engine trap technology in order to achieve compliance. This technical requirement reduces the fuel economy of the entire Mercedes-Benz diesel fleet and correspondingly the overall fleet CAFE value by approximately one mile per gallon from 27.5 to 26.5 based upon the projected sales mix needed to achieve compliance with the CAFE standards. Accordingly, even if current consumer demand, which is discussed more fully below, produced diesel sales at a 68.5 percent rate, the newly established Federal particulate matter standard mandating technology which reduces diesel vehicle fuel efficiency would cause MBNA to fail to meet the CAFE standards. For this reason, MBNA believes NHTSA must take into consideration the separate federal emission standard which significantly reduces the ability of the company to achieve the CAFE standard in considering future CAFE requirements.

III. NHTSA GRAY MARKET IMPACT

In addition to new emission rules, NHTSA programs themselves have dramatically impacted on the ability of MBNA to achieve its CAFE standards. When the CAFE program was initially established pursuant to Congressional mandate, MBNA intentionally decided not to import certain low mileage gasoline vehicles into the United States market. The reason for such a marketing plan is obvious. Although the vehicles could be easily sold in the United States, the low fuel economy average of the vehicles had a dramatic impact on the overall CAFE of the MBNA fleet.

For the first two model years of the CAFE program, MBNA maintained its marketing position with respect to the lower mileage European vehicle. However, NHTSA specifically changed its regulations and programs with respect to the importation of gray market vehicles in such a manner as to provide a flood of the larger engine, low mileage, gray market Mercedes Benz European vehicles to be imported and sold in the United States without being subject to CAFE requirements or penalties. Obviously, this action by NHTSA required MBNA to reconsider its marketing strategy.

Accordingly, beginning in model year 1984, MBNA began importing the larger, less fuel efficient engines. The importation of these vehicles and their availability in competition with MBNA diesel engines has resulted in a reduction in the MBNA CAFE standards by another two to three miles per gallon. Since MBNA had no marketing plans to bring these vehicles to the United States and was merely responding to the fact that the NHTSA was allowing such vehicles to be brought in and sold in the United States by parties who the Agency refuses to regulate under its CAFE regulations, MBNA believes that the NHTSA must recognize this factor with respect to all importers into the United States and reduce the CAFE standards to 26.0 mpg beginning with model year 1986.

IV. Customer Demand

Customer demand, over which MBNA has absolutely no control, has dramatically switched from diesel to gasoline engines in view of the relative availability and lower price of gasoline. As of the date of this comment regular unleaded gasoline is selling in the United States for approximately $1.15 per gallon. At the same time, diesel fuel is selling for approximately $1.29 per gallon. This is directly opposite of the fuel pricing which was existent at the time the CAFE legislation was passed and the Agency began its enforcement efforts. As a result, the demand for gasoline vehicles increases while the demand for diesel versions decreases. This has caused the MBNA diesel to gasoline sales ratios to shift from 79 percent diesel vehicles and 21 percent gasoline vehicles in 1982 to 41 percent diesel vehicles and 59 percent gasoline vehicles as projected for model year 1985. Clearly, Congress provided the Secretary with the administrative authority to modify the fuel economy regulations for precisely this type of event -- an event over which manufacturers have no control but which may in fact impart a significant penalty on the manufacturer. For this reason, MBNA requests that the Secretary modify the fuel economy regulations to 26.0 mpg beginning in model year 1986.

V. Economic Impact

The difference in penalty payments for MBNA between the 27.5 CAFE standard and the 26.0 CAFE standard will be approximately 7 million dollars. In view of the fact that this economic penalty is imposed because of two separate actions of federal government agencies over which MBNA has no control and because of changes in consumer buying habits due to fuel price changes over which MBNA has no control, the company believes that the Agency should modify its CAFE standards accordingly. This fact is even more evident when it is recognized that even in the face of reduced consumer demand for diesel vehicles, MBNA has maintained, and will be expanding in the future, the diesel models available for purchase in the United States. Thus, MBNA has done everything within its corporate power, and will continue its efforts in this direction, to improve its CAFE level. In the face of such action the Secretary should not impose an additional economic penalty which cannot be ameliorated by corporate action.

The benefit of a reduced CAFE standard would flow to the consumer. By reducing the CAFE penalty, MBNA may be able to price diesel engine vehicles to improve their competitiveness thereby making the vehicles more attractive and correspondingly helping improve overall fleet fuel economy. This fact coupled with the unfairness of penalizing a company because of government programs and market actions clearly supports the pending petitions to reduce the 1936 and future model year CAFE standards to 26.0 mpg.

Testimony of Joan Claybrook, President, Public Citizen
on Automobile Fuel Economy Standards
Before the
Committee on Energy and Commerce
Subcommittee on Energy Conservation and Power
September 19, 1985

Mr. Chairman and members of the Committee, my name is Joan Claybrook. I am President of Public Citizen, a private, non-profit public interest organization founded in 1971 that does research, education, litigation and advocacy on public policy issues. I was Administrator of the National Highway Traffic Safety Administration and was responsible for administering the federal motor vehicle fuel economy program from April of 1977 to January of 1981.

Mr. Chairman, I want to make several points in my testimony. They are:

1) The CAFE standards were adopted in 1977 to save billions of gallons of gasoline, to reduce the nation's vulnerability to oil shocks, and to push manufacturers to install efficiency technology because of the inadequacies of the free market. These reasons are still valid today.

2) The CAFE standards have been effective. They have significantly increased fuel economy in cars and trucks sold in this country, saving the nation and consumers billions of dollars.

3) Ford Motor Company and General Motors Corporation had the technological and financial ability to meet the existing 1983 through 1985 passenger auto CAFE standards. This is confirmed by

NHTSA analyses. Nevertheless, GM and Ford failed to meet the standards by almost 3 mpg. Chrysler Corporation, despite near bankruptcy in 1979, has met the standards through investment of almost $5 billion in sensible product planning and technological implementation.

4) Ford and General Motors have taken two contradictory tracks in attempting to avoid paying hundreds of millions of dollars in penalties for failing to meet the standards. On the one hand they have asked for a rollback of the passenger auto CAFE standards for 1986 and subsequent model years, arguing they can't meet the standards. On the other hand they have requested "carry-back credits" to apply against penalties otherwise due for model years 1984 and 1985, arguing they will exceed the existing standards during model years 1986 and through 1988.

5) NHTSA has almost destroyed its capacity to effectively analyze the petitions recently filed for rolling back the passenger automobile CAFE standards by drastically cutting it fuel economy and rulemaking staff.

6) NHTSA has sharply reduced the amount of fuel economy information it collects and has crippled its and the public's ability to analyze it.

THE REASONS FOR ADOPTING THE CAFE STANDARDS STILL EXIST

When Congress first adopted automobile fuel economy standards in 1975, the effect of the 1973 Oil Embargo was fresh in our minds. It was relatively easy to understand why standards were important to our country's security and economic well being.

But now, with the most recent oil supply disruption six years far behind us, it is harder for many of us to appreciate the need for improved auto fuel economy. However, the reasons for improving auto fuel economy are as valid today as they were in 1975.

One of the reasons we adopted CAFE standards was our high level of oil imports. While the Administration points to statistics showing a sharp decline in OPEC oil imports and the Strategic Petroleum Reserve as evidence that we are not nearly as vulnerable to oil supply disruptions as we were in 1975, there are other facts to consider which make it clear that our economy is still highly vulnerable to oil supply perturbations.

First, the current level of oil imports to the U.S., including imports from non-OPEC sources, has only fallen a moderate amount since 1975, from a little over 6 MMB/D to 5.4 MMB/D in 1984--an 11% decline (1). But far more important, our imports are expected to rise substantially over the next fifteen years. DOE projects imports will rise by as much as 2.5 MMB/D by 1995 (2).

Second, because of an agreement with the signatory nations of the International Energy Agency, we are obligated to share our oil supplies with them in the event of a significant oil supply shortfall.

Third, and perhaps most important, our oil supplies come from a free market. If an oil supply shortfall were to occur anywhere in the world, or if the world oil market were to tighten substantially, which most analysts regard as inevitable, world oil prices would soar. In fact, DOE has projected that oil prices will exceed $45 per barrel by 1995. (3) And since the U.S. is part of that market, we would not be insulated from that soaring price. In other words, despite the fact that our oil imports now come from more diverse sources, and despite the fact that we have a 100-plus day supply of oil in the Strategic Petroleum Reserve, we are still economically vulnerable to world oil supply shortfalls and the effect they have on world oil prices.

A second reason for adopting CAFE standards that hasn't changed since 1975 is that automobiles consume a great deal of oil and represent an enormous conservation potential.

New car fuel efficiency has gone up substantially since 1975, from 14.7 miles per gallon (mpg) in 1975 to today's 26 mpg (4). But the average fuel economy of all cars on the road has only increased from 13.5 mpg in 1975 to 16.7 mpg in 1983 because there are so many old, inefficient cars still in use (5). The combination of the slow rise in average fuel economy of cars on the road and a small increase in the number of vehicle miles travelled has meant that total motor gasoline consumption (and total energy consumption) for transportation was the same in 1983 as it was in 1975 (6).

Not only has the actual amount of petroleum used for transportation remained high, the percentage of total oil consumption in our country devoted to transportation has grown steadily, from 54% in 1975 to 62% in 1984 (7). Our petroleum use is thus becoming increasingly concentrated in the transportation sector, and unlike other sectors that have ample opportunity to switch from petroleum to other sources of fuel, such opportunity is very limited in the transportation sector. Our conservation efforts in transportation have therefore become even more important.

There is another reason Congress initially set CAFE standards. It did not want to rely solely on market forces to increase fuel economy because market forces were not sufficient to provide a steady increase in automobile fuel economy through a steady shift in consumer demand for more small cars. That, too, hasn't changed.

As we are all aware, the real price of gasoline has been falling since 1981. The price signal being sent to consumers, and through them to manufacturers, is therefore one that discourages conservation and investment in fuel efficiency. In fact, the sale of gas guzzling V-8 engines is going up; they accounted for 28% of sales in 1984 (8). And consumers are now buying the same size-mix of cars they did before the last oil crisis (9). Indeed, the market with respect to fuel economy is far more responsive to short-term market conditions, namely the present glut of oil supply, than it is to long-term or geopolitical conditions. What makes this situation unacceptable is that cars now being sold will be operating, on average, for the next ten years, well into the period during which energy analysts expect oil supplies to tighten and prices to rise significantly.

But even if fuel prices were high, it is unlikely that the market alone would push fuel economies much beyond the levels mandated by the 1985 passenger auto CAFE standard. As fuel economy is improved above 30 mpg, the resulting fuel cost savings are roughly offset by the costs of improving fuel economy. This is true even if the price of gasoline were double the 1981 price of gas (10).

THE STANDARDS HAVE WORKED

Determining what portion of automobile fuel economy improvement over the last decade has been due to CAFE standards and what portion has been due to market forces is difficult at best, but some recent analyses by K.G. Duleep of Energy and Environmental Analysis, Inc. indicates that CAFE standards may have been responsible for the introduction of GM's X-Body in mid-1979, its J-Body in mid-1981 and its A-Body in 1982. Duleep has also concluded that there is strong evidence that Ford's introduction of its Escort in 1981 and its Tempo/Topaz in mid-1983 were in response to CAFE standards (11).

In its 1981 report to Congress, NHTSA concluded the standards had (12):

* saved the average buyer of a 1980 car over $1700 compared to the 1976 buyer because of reduced fuel costs, and thousands of dollars more for the 1985 car buyer;
* reduced the fuel consumption of passenger cars and light trucks to create cumulative fuel savings by the year 2000 of about 16 billion barrels of fuel;
* helped to lessen our growing trade deficit (imported oil accounted for one-half of our $123 billion trade deficit

in 1984);

- contributed to the stabilization of the dollar and reduction in the inflation rate (imported oil cost the U.S. $5.6 billion in 1972 and $100 billion in 1981);
- enhanced our national security by lessening our growing dependence on imported oil--a dependence which greatly affects foreign as well as domestic economic policy;
- loosened the OPEC hammerlock on oil supplies and prices;
- provided stable planning targets for manufacturers and pushed them to move quickly to compete with imported vehicles;
- stimulated substantial innovation in automotive design and production technology.

This administration's claim that the standards have not worked to increase fuel economy, and that the fuel economy increases thus far are completely the consequence of market pressures, is even refuted by industry spokesmen. On October 30, 1977, while appearing on NBC's Meet the Press, Henry Ford said,

> "...we wouldn't have the kinds of safety built into automobiles that we have had unless there had been a federal law. We wouldn't have had the fuel economy unless there had been a federal law; and there wouldn't have been the emission controls unless there had been a federal law."

The standards have also forced manufacturers to devote critical resources to new technology for energy efficiency. In August of 1978, Stuart Frey, Chief Vehicle Engineer of the Car Engineering Group, Ford Motor Co., said in reference to the fuel economy program,

> "...let me say that the task ahead is the kind that an engineer relishes, because it puts a premium on ingenuity and creativity. I believe I speak for all of my colleagues in the industry when I say I'm delighted to be part of the action."

FORD AND GM COULD HAVE MET THE CAFE STANDARDS WITH IMPROVED TECHNOLOGY

The Congress first adopted the CAFE standards because they were impatient with the rate at which market forces were increasing the fuel economy of cars sold in the U.S. It was clear that our economy and national security were at stake. The law requires maximum feasible fuel economy taking into account technological feasibilty, economic practicability, the need of the nation to conserve energy and other vehicle standards. These requirements are designed to force the development and use of technology that would improve automobile fuel efficiency. In other words, the CAFE standards were meant to be "technology forcing." Now we are hearing automobile manufacturers blame their failure to meet the standards on the very thing that Congress had decided not to rely on when it adopted CAFE standards: the market.

In 1980 GM projected that their 1985 CAFE would be 31 mpg, easily meeting the 1985 passenger auto standard of 27.5 mpg. Ford projected in 1981 that their 1985 CAFE would be 29 mpg. In 1984 GM revised its 1985 CAFE estimate to 25.4 mpg, and Ford revised its to 25.6.

Recent reports by the NHTSA comparing their 1977 analyses (adjusted for 1985 sales mix) which served as the basis for setting the 1980-84 standards, and the implementation of the fuel economy requirements by the major U.S. companies, "indicates that there are several major technological reasons (such as higher-than-anticipated vehicle weights) for the fuel economy change" causing GM and Ford to not comply with the 1985 standard of 27.5 mpg.

The NHTSA reports show that GM's estimated 1985 CAFE is 3.2 mpg lower than predicted because of much heavier vehicle weight and the use of larger engines. The failure to reduce rapid acceleration and less efficient transmissions cost 1.4 mpg, making GM about 4.6 mpg below its predicted technological capability. Overall for 1985 models, GM will reach only 25.1 mpg rather than its predicted fuel economy of 29.9 mpg (adjusted).

The story for Ford is similar. Its heavier fleet costs it 2 mpg more than predicted, while its heavier engines and less efficient transmissions add another 1.6 mpg. Ford also made a few positive changes to increase fuel economy, making it about 3.0 mpg below its predicted capability in 1985 models. Overall, for 1985 models, Ford will achieve only 25.3 compared to its predicted fuel economy of 28.3 (adjusted).

Both Ford and GM have claimed they have missed complying with the recent model year standards through no fault of their own. The marketplace, they allege, has changed, making it impossible to comply. However, the DOT analysis shows that for GM the percentage of smaller cars in its sales mix is much higher than predicted in 1977. The prediction was 19.5%, while GM's current 1985 production contains 30 percent. For Ford it is just about on target. The DOT report states, "Despite the decline in real fuel prices over the last few years, the current sales mix for each domestic company has more small cars and fewer large cars than was assumed for the 1985 model year in the 1977 analysis" which predicted the companies would exceed the standard.

NHTSA apparently believes that Ford and GM took all possible steps to sell their more fuel efficient cars with favorable discounts, financing, dealer incentives and advertising to compensate for its fuel inefficient technological production decisions. Chrysler argues that they have not. The record is meager on this point.

Thus, as to the criteria in the statute, GM and Ford clearly have not utilized their technological capability to comply. With 1984 profits of $4.52 billion for GM and $2.91 for Ford, these companies certainly have the economic capability to invest in the improvements which numerous studies have shown to be cost-effective.

The decisions by Ford and GM to hold onto old, low-mileage models were a gamble. They were banking on sustained consumer demand for their higher fuel economy models to provide the margin needed to carry them over the standard. But they knew by 1983 that continuing to sell the older style low-mileage models might well jeopardize their ability to meet the standards. They made billions of dollars with this strategy, saving on the investments in new technology and reaping big profits from their older cars. But even though they realized this strategy would not enable them to meet the standard, they continued to sell these old models. they banked instead on a friendly White House to excuse them from penalties for failing to meet the standards.

While Ford and GM are falling far short of the 1985 automobile CAFE standard, Chrysler expects to meet it, despite its extreme financial difficulties in the late 1970's. And even though American auto companies received protection from the 1981-1984 voluntary automobile import quota, particularly for their small car sales (according to the International Trade Commission the Detroit companies collected an additional $15.7 billion from consumers because of it), Ford and GM still failed to make the investment in fuel economy necessary to meet the standards.

This is not the first time the government has been asked to weaken the CAFE standards. The manufacturers opposed the passage of the law in 1975 and instead sought voluntary standards. In 1977 they opposed NHTSA's decision to require rapid increases in fuel economy in the early years of the law's effect and smaller increases later (the so-called "front loading" of the standards), and instead sought a steady or "straight-line" increase. And in 1979 they requested a rollback of tne standard from NHTSA, which was refused.

Again in 1980 manufacturers sought to weaken the standards. They asked for and received a change in the law that allowed them to use "carrry-forward" and "carry-back" credits for up to three years on either side of the current model year (rather than one year).

These credits are used to reduce penalties that would otherwise be due the government for failing to meet the standards. The credits have been enormously valuable to manufacturers, enabling them to fall far behind the CAFE standards in recent years without having to pay any penalties. Between 1978 and 1982 Ford earned over $466 million in carry forward credits for its domestically produced cars and trucks to apply against penalties. In the same period GM earned about $1.3 billion in carry forward credits for its domestically produced cars and trucks. 1984 credits and penalties have not yet been made public by NHTSA Untill the EPA emission test recalculation, it was generally believed that both GM and Ford would use up most if not all of their credits on noncomplying 1984 models. Public Citizen and the Center For Auto Safety are suing EPA over its recalculation decision.

Now the manufacturers want to weaken the standards again. They want to take advantage of current low gas prices and concurrent complacency toward energy problems so that they can be excused from having to pay hundreds of millions of dollars in penalties. But they shouldn't be excused for their failure to comply with the standards. Ford and GM knew the 1985 requirements of the law ten years in advance of its application. They could have complied with it. For proof, one has to look no further than the Chrysler Corporation.

FORD AND GM ARE CONTRADICTING THEMSELVES, ARGUING IN ONE PETITION THEY WILL EXCEED THE PASSENGER CAR STANDARDS, AND IN ANOTHER THAT THEY CANNOT MEET THEM.

The manufacturers are taking a contradictory approach in attempting to be excused from the penalties for failing to meet the passenger car standard for 1985. On the one hand, they have filed petitions with NHTSA requesting a rollback of the passenger automobile CAFE standard for 1985 and subsequent years. They argue they can't possibly meet the standard during that period, that they might have to shut down plants, cease production of certain automobiles, and that achievement of the 27.5 mpg standard is not feasible in this decade.

On the other hand, they have filed documents with NHTSA describing how they will *exceed* the 27.5 mpg standard within the next three years, making them eligible for carry back credits to be applied against their 1984 and 1985 penalties. Much of the information in these documents has been declared confidential by NHTSA, making it unavailable to the public, so we are unable to effectively compare the two petitions or comment for the Committee on contradictions between them.

This two-track, contradictory strategy is so bold it reveals the manufacturers' underlying arrogance toward the law.

NHTSA HAS DESTROYED ITS CAPACITY TO EFFECTIVELY ANALYZE FUEL ECONOMY INFORMATION AND PROCEEDINGS.

From 1981 to 1983, the Reagan Administration devastated NHTSA's information base on fuel economy:

- It eliminated virtually all automotive fuel economy research in NHTSA, which in 1981 was a $7 million program.

- The fuel economy research program has been disbanded and the staff dismissed or dispersed.
- NHTSA's technical records that were not discarded have been sent to the Transportation Research Center in Boston, Massachusetts for storage.
- The marketing information records were transferred to the Deputy Assistant Secretary for Auto Industry Affairs in the Department of Commerce.
- There is no longer a sufficient data base or capability in NHTSA to analyze the industry's technological capabilities to improve fuel economy, to test new concepts, or to assess the market.
- The automotive fuel economy rulemaking staff was cut from about 18 employees to 3 and the office was collapsed into a division called Market Incentives, which is otherwise primarily responsible for the motor vehicle crash testing program.
- NHTSA has the equivalent of one full-time staff member assigned to handle fuel economy program planning and evaluation, enforcement, and legal services.
- The detailed program plan prepared during the Carter Administration for monitoring the industry's progress in complying with the fuel economy standards has been ignored since early 1981.

By 1983, of the 27 full-time professionals assigned to work on the fuel economy research, rulemaking and enforcement program, three remained in a full-time capacity. For their tremendous contributions to the welfare of this nation, none of the staff was promoted, several were riffed, more than ten were downgraded, several retired early to avoid being downgraded or riffed, and several others left the agency for the same reasons. In addition, the chief of the fuel economy research office left the agency, and the top three rulemaking officials were transferred to safety programs, where they had modest prior experience. Today, the only fuel economy activity in NHTSA is carried out in the rulemaking office, which contains six professional staff, none of whom are recognized leaders in this field.

NHTSA HAS SHARPLY REDUCED THE AMOUNT OF FUEL ECONOMY INFORMATION IT COLLECTS

In addition to gutting the agency's fuel economy research and staff resources, on August 12, 1982 the Reagan Administration drastically reduced the amount and type of information the automotive industry is required to submit to the agency on a regular basis concerning their progress in complying with the standards. The amended requirements do not require manufacturers:

> "to submit data on technology and sales changes from the preceding model year or changes during the current model year intended to increase fuel economy. No data will be required on marketing measures to be used to increase fuel economy. Also, manufacturers will be required to submit a variety of technical and sales data for each vehicle configuration only once rather than twice a year." (13)

In removing the requirements for this information, the agency said that such standards-related information was "useful when the agency engaged in major fuel economy standard-setting procedures...", implying the information was no longer needed because no future standards would be issued. It argued the agency could always obtain necessary information as it has in earlier proceedings through questionnaires and special orders.

In 1982, consumer groups urged the agency not to cut back on the manufacturer reporting requirements because the agency needed the information to properly monitor manufacturing activities in producing and marketing fuel efficient vehicles. But the agency responded:

> "Marketing measure information was more useful in times when manufacturers might have needed to use such measures to raise their average fuel economy levels enough to comply with applicable fuel economy standards. In the current market situation, compliance with standards is typically assured by comfortable margins. Thus, marketing measures are targeted to problems associated with inventories of over-stocked vehicles. With regard to technological change information, this material is typically available to the agency in the trade press. It can also be derived from the configuration and model type data in many cases." (14)

This statement was made in August 1982. Not only is it incorrect today, but there were strong hints in early 1982 that the market was shifting back toward larger cars. This view reflects not only a short term mentality, but a total abdication of the agency's legal responsibilities.

NHTSA HAS ALREADY REVERSED THE TREND TOWARD IMPROVING LIGHT TRUCK FUEL ECONOMY

In 1980 NHTSA issued standards for light trucks for each model year through 1985. In October 1984 NHTSA granted a request from Ford Motor company to roll back the 1985 standard from 21 mpg to 19.5 mpg, which yields the absurd result that the 1985 standard is actually lower than the 20 mpg standard in effect for the 1984 model year. At the same time, NHTSA set the standard for the 1986 model year at 20 mpg.

NHTSA explained that its decision was based on "a continuing shift in consumer demand," i.e., increased demand for larger vehicles and engines. Public Citizen, along with three other consumer groups, recently challenged that decision in court. Our brief argues that NHTSA must set fuel economy standards based not on manufacturer's preference for building larger vehicles, but rather on the factors outlined in the Act: technological feasibility; economic practicability; the effect of other standards on fuel economy; and the need of our country to conserve fuel. NHTSA should not be in the business of rewarding GM and Ford because they have opted for a gas-guzzler marketing strategy.

One final point on light truck standards. The Act requires NHTSA to set light truck fuel economy standards at least 18 months prior to the beginning of the model year. NHTSA failed to meet this standard for the 1986 model year, and it has also failed to issue a standard for the 1987 model year, which begins in less than 18 months. It appears it will also miss the deadline for 1988 models. These deadlines are important and should be strictly enforced. If the agency fails to abide by Congress' timetable, its inaction gives the manufacturers another excuse to ask for fuel economy standards to be set below the highest feasible level, on the theory that NHTSA did not give them enough lead time to comply.

CONCLUSION

The CAFE standards have served our country well. Although we are still vulnerable to world oil supply disruptions, we would be much more vulnerable in the absence of the standards. In order to continue decreasing that vulnerability, which could once again lead to economic chaos as did the oil shocks of the 1970's, we must continue to reduce fuel consumption in automobiles, which consume a growing majority of the petroleum our country consumes.

To reverse the trend toward increasing fuel economy and excuse certain auto manufacturers of penalties they will incur for not obeying the law is unfair to manufacturers that have met the law; it rewards chance-taking with important public laws; and it will set our country on a path of increasing fuel consumption and petroleum imports, setting us up for another oil-related economic upheaval.

Segments of the auto industry have already announced the start of a publicity campaign to convince Americans that enforcement of current fuel economy laws means restriction of consumer choice of vehicles. They call the campaign AutoChoice. It is sure to dwell on consumers' reduced concern for fuel economy, and attempt to convince them that improved fuel economy means consumer sacrifice--which is patently untrue.

Congress should prevent NHTSA from rolling back the passenger automobile CAFE standard, which, as reflected by their recent rollback of the light truck CAFE standard, they are about to do. Ford and GM's two-track, contradictory attack on our fuel economy laws should be prevented lest they make a sham of the entire fuel economy program. This committee in particular should demand that NHTSA make public the underlying material and analyses by the auto companies which serves as the basis for the current rulemaking decision. Without it, the public cannot judge whether the decision is being based on substantial evidence or not.

NOTES

1. Monthly Energy Review, Department of Energy, April 1985, pp. 42-43.
2. Energy Projections to the Year 2000, Department of Energy, October 1983, pp. 5-12.
3. Ibid.
4. Energy Conservation Indicators 1983 Annual Report, Department of Energy, October 1984, p. 119.
5. Monthly Energy Review, p. 17.
6. Energy Conservation Indicators, p.116.
7. Monthly Energy Review, pp. 7, 24.
8. MVMA Motor Vehicle Facts and Figures '84.
9. DOE Monthly Data Report #18, Sept. 14, 1984.
10. Frank von Hippel and Barbara Levi, "Automotive Fuel Efficiency: the Opportunity and the Weakness of Existing Market Incentives," Resources and Conservation, vol. 10, pp. 103-124, 1983.
11. K.G. Duleep, presentation at Transportation Research Board Annual Meeting, National Academy of Sciences, January 15, 1985.
12. Fifth Annual Report to Congress, Automotive Fuel Economy Program, Department of Transportation, January 1981, p. 63.
13. Seventh Annual Report to Congress, Fuel Economy Program, Department of Transportation, January 1983.
14. Federal Register, Vol. 47, No. 156, August 12, 1982.

7607 Sixth Avenue
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September 9, 1985

Chairman Markey and members of the committee:

I appear on my own behalf as a private citizen who is concerned about the effect of CAFE standards on the automobile. I oppose any mileage requirements. It is unnecessary and counter-productive. I am driving a 1975 Pontiac with a 400 cu. in. V-8 which has 102,000 miles. The engine has run flawlessly. My gas mileage averages 14 mpg. But there are considerations other than mileage when buying a car. Like safety and durability. What the CAFE standards are doing is to force manufacturers to substitute four cylinders and plastic in their cars for gas mileage in place of durability. I would not trade my car for any of those "fuel-efficient" death traps now being made. I have recently seen ads in the papers showing the safest cars on the road and they are all big, rear-wheel drive cars with V-8 engines! These are being taken away from the American people by wrong-headed legislation like CAFE standards!

It is time to end the damage done to the auto industry by the Congress. Over the decade that has passed since the standards were established, oil supplies have gone from shortage to glut.

Over fifty years ago, Henry Ford gave the the working people of America a car with a V-8 engine. It revolutionized the industry. Today, there are only a handful of rear-wheel, V-8 cars left to choose from. The American consumer cries out for freedom of choice in the automobile industry.

John Valaske
John Valaske